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No.

In the Supreme Court of the United States

ROLAND GIBSON, SR., JESSE GIBSON, ROLAND GIBSON, JR. and DENNIS GIBSON
PETITIONERS

vs.

THE CITY OF NEW ORLEANS and LLOYD WEST
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA STATE SUPREME COURT

PETITION FOR WRIT CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a warrantless arrest by police of a citizen, while in his home after a fruitless search, pursuant to uncorroborated information provided by an arrestee, who was a convicted felon, known by police to be unreliable, violate the provisions of the Fourth Amendment where the search warrant affidavit was deceptive, in that it contained deliberate lies by the informant, along with intentional misstatements and omissions including omissions regarding the informant's veracity, credibility and basis of knowledge.

2. When a citizen has both state and federal remedies for violations of his Fourth and Fourteenth Amendment rights, can that state's highest court, on review, create post-trial, an arbitrary, evidentiary rule, solely applicable to that case, that by its effect, retroactively revokes the state remedy, thereby effectively denying that citizen his federal remedy and the equal protection to which he is entitled under the Fourteenth Amendment.

3. Is a citizen's Fourth Amendment right to be free from unlawful arrest violated when he is arrested in his home without a warrant by police officers whose conduct when judged by an objective standard would be considered, at a minimum, grossly negligent and most probable as evidencing a reckless indifference to the individual's right?

4. Is a citizen deprived of liberty within the meaning of the Due Process Clause of the Fourteenth Amendment when he is convicted and serves twenty-five years of a life sentence as a result of the police officers' misconduct in con-

nection with the arrest and the prosecution's failure to disclose exculpatory material in the state's file?

5. Can a state's highest court, on review, post-trial, effectively eviscerate a person's state tort-law remedy so as to deny that individual adequate redress for injury to which he is entitled under the Fourteenth Amendment?

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All parties have been served pursuant to Supreme Court Rule 29.3.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Roland Gibson, Sr., Jesse Gibson, Roland Gibson, Jr. and Dennis Gibson respectfully petition this Court for a writ of certiorari to review the judgment of the Louisiana State Supreme Court which disposed of petitioners' Fourth and Fourteenth Amendment claims on the merits. A ruling on the merits of federal questions by the highest state court leaves the federal questions open to review by this Court.[1]

V.

OPINION BELOW

The Louisiana State Supreme Court decided this case on April 11, 2000. An Application for Rehearing was filed on April 13, 2000. The Application for Rehearing was denied on June 16, 2000. The opinion of the Louisiana State Supreme Court of April 11, 2000 and the per curiam opinion dated June 16, 2000 are reported at 758 So. 2d 782 (LA 2000). The opinions of the Louisiana State Supreme Court and the Louisiana Fourth Circuit Court of Appeals are reprinted as Appendix A and Appendix B, respectively.

VI.

STATEMENT OF JURISDICTION

The Gibsons seek review of the judgment of the Louisiana State Supreme Court issued on April 11, 2000

[1] *Manhattan Life Insurance Company v. Cohen*, 234 U.S. 123, 134 (1914); *Raley v. Ohio*, 360 U.S. 423, 436 - 437 (1959); *Boykin v. Alabama*, 395 U.S. 238, 241 - 242 (1969).

and their denial of rehearing on June 16, 2000.[2]

This Court has jurisdiction under 28 U.S.C.A. section 1257 (a). This petition was filed within ninety days of the date of the denial of petitioners' Application for Rehearing and thus, timely.[3]

VII.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

The following constitutional provisions and statutes are involved in this case:

United States Constitution, Fourth and Fourteenth Amendments

The Fourth Amendment to the United States Constitution provides in pertinent part:

The right of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures, shall not be violated ...

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

[n]or shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its Jurisdiction the equal protection of the laws.

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[2] See Appendix A.

[3] Supreme Court Rule 13. 1.

VIII.

STATEMENT OF THE CASE

At approximately 8:30 o'clock p.m. on December 30, 1967, Charles Reinecke, Jr., a taxi driver, was killed with a .22 caliber weapon during an armed robbery. A fingerprint which was lifted from one of the back windows of the cab was later traced to Lloyd West. West's fingerprints were on file because he had prior criminal convictions for burglary, assault and battery. Also, during a previous arrest West had been charged with illegal possession of a .22 caliber weapon.

West was arrested on January 29, 1968 and charged with a crime that was unrelated to the Reinecke murder. He was brought in for questioning about the Reinecke murder on March 27, 1968, approximately three months after the murder. He first denied any knowledge of the murder and gave the police two individuals with whom he claimed to have been at the time of the murder. Those individuals were questioned by the police and denied being with West. West next gave the police a third individual as an alibi witness, Thomas Crayton, who also denied being with West at the time of the murder. According to the police, Crayton informed them that on December 29, 1967 West and an AWOL soldier named "Roland" had spent the night at his home. Crayton stated that he left West and "Roland" at his home before noon, on December 30, 1967, approximately nine hours before the crime. The police contacted the Army and confirmed that as of 7:00 o'clock a.m. on December 30, 1967, a soldier named Roland Gibson, Sr. was AWOL from

his company at Fort Campbell, Kentucky and could have been missing for forty-eight (48) hours .[4]

West was interviewed a third time and confronted by the police with the discrepancies in his two earlier statements. At this point, he again changed his story and claimed that he was with his mother at the time of the murder. The police reported that when Mrs. West was summoned to the police station, she denied being with her son at the time of the murder and told them that he was lying. The police then asked West to submit to a polygraph test which he failed. On March 29, 1968, after failing the polygraph, according to the police, West admitted he was at the scene of the Reinecke murder and named Roland Gibson, Sr. as the shooter.

Based on West's alleged confession, the police obtained a search warrant for Gibson's residence. The search was conducted, however, the alleged murder weapon was not discovered.[5] Although the search of Gibson's home produced no incriminating evidence, he was arrested in his home without an arrest warrant more than two hours after the fruitless search.

Ironically, on March 30, 1968 the police obtained a search warrant for West's residence because, following the fruitless search of Gibson's home, West confessed that the murder weapon, as stated in the probable cause affidavit to obtain the search warrant for Gibson's home was, all along, at his residence under his mattress.

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[4] See Appendix F.

[5] See Appendix G.

On April 4, 1968 West and Gibson were jointly indicted by a Grand Jury for first degree murder. On November 21, 1968 Gibson was found guilty as charged with a recommended life sentence and on November 25, 1968 the Court sentenced Gibson to serve the balance of his natural life at hard labor in the Louisiana State Penitentiary at Angola. On November 27, 1968 West withdrew his plea of not guilty and entered a plea of guilty to the charge of first degree murder without capital punishment. The State of Louisiana accepted West's guilty plea and he was sentenced to serve the balance of his natural life at hard labor in the Louisiana State Penitentiary at Angola.

Gibson was granted a new trial on December 18, 1993. On March 31, 1993, the State of Louisiana entered a Nolle Prosequi in the matter *State of Louisiana v. Roland Gibson*.[6]

IX.

PROCEEDINGS BELOW

The instant lawsuit was filed in the Civil District Court for the Parish of Orleans on March 30, 1993 against the City of New Orleans, Lloyd West and the Orleans Parish District Attorney's Office seeking damages for malicious prosecution, false imprisonment and intentional, reckless and inexcusable indifference to the constitutional rights of

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[6] 271 So. 2d 868 (LA 1973).

petitioner, Roland Gibson, Sr.. The Orleans Parish District Attorney's Office was voluntarily dismissed from this matter after the Louisiana State Supreme Court held in another case that the office enjoyed absolute immunity.[7]

A bifurcated trial was held on January 29 and 30, 1998 and on February 2, 1998. On February 2, 1998 the jury returned a unanimous verdict in favor of the Gibson family and against Lloyd West which found West twenty-five percent at fault and the City of New Orleans seventy-five percent at fault for causing Mr. Gibson's false arrest, malicious prosecution and time served in prison. On February 9, 1998 the trial court rendered its verdict in favor of the Gibson family and against the City of New Orleans finding the City ninety percent at fault for the deliberate actions of the police in causing Mr. Gibson's false arrest, malicious prosecution and time served in jail.[8] The trial court found West only ten percent at fault.

On February 28, 1998 the Louisiana Fourth Circuit Court of Appeals amended the trial court's judgment by reducing the ninety percent assessment of fault against the City of New Orleans to forty-five percent. The Court then assigned the forty-five percent reduction to the non-party, immune, defendant, the Orleans Parish District Attorney's office. Mr. West's assessment of fault remained at ten percent.[9]

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[7] *Knapper v. Connick*, 681 So. 2d 944 (LA 1996).

[8] See Appendix C.

[9] See Appendix B.

On March 4, 1999 the City of New Orleans filed an Application for Rehearing with the Louisiana Fourth Circuit Court of Appeals. On May 14, 1999 the Louisiana Fourth Circuit Court of Appeals denied the City's Application for Rehearing. Mr. West did not file an Application for Rehearing, nor did he file an Application for Supervisory Review with the Louisiana State Supreme Court. On June 14, 1999 the City of New Orleans, filed an Application for Supervisory Review with the Louisiana State Supreme Court. The Louisiana State Supreme Court granted the City's Writ Application and on April 11, 2000 reversed the trial court's judgment in its entirety.

On April 13, 2000 the Gibsons filed an Application for Rehearing asserting, inter alia, that the Louisiana State Supreme Court had taken various decisions of the federal appellate courts and this Court's decisions out of their proper context and decided significant federal questions regarding the Fourth and Fourteenth Amendments to the United States Constitution in ways that directly conflicted with those federal decisions. Further, the Gibson's asserted that the Court was not following its own evidentiary rules in not permitting the trier of fact to determine, based on her own observation, whether to believe testimony offered before her in the 1998 civil trial rather than a confession implicating petitioner which was so suspect that a criminal court judge in 1993 granted petitioner a new trial which resulted in the later dismissal of the charges. On June 16, 2000 the Louisiana State Supreme Court denied rehearing in a per curiam opinion, holding that the trial judge was manifestly erroneous in crediting West's 1993 recantation of his 1968

criminal trial testimony.[10] The trial judges's statement in her Reasons for Judgment that based on personal observations in the 1998 civil trial she found his recantation of his earlier testimony and his allegations of beatings "very credible". At no point in her Reasons for Judgment, did she indicate that she credited West's 1993 sworn recantation at the post conviction relief hearing of his 1968 trial testimony.[11] The Louisiana State Supreme Court ignored West's 1998, uncontroverted civil trial testimony which the trial court held was "very credible".[12]

X.

REASONS FOR ALLOWANCE OF THE WRIT

A. THE QUESTIONS PRESENTED ARE OF EXTRAORDINARY NATIONAL IMPORTANCE THAT NEED TO BE ADDRESSED IF CONSTITUTIONAL GOVERNMENT IS TO SURVIVE

Courts have a constitutional obligation to identify constitutional violations and also to remedy them. The Louisiana State Supreme Court was derelict in its duty to recognize violations of its citizens' Fourth and Fourteenth Amendment rights and to provide a meaningful remedy for the unconstitutional punishment suffered by Mr. Gibson and his family as a result of police misconduct that violated Gibson's Fourth and Fourteenth Amendment rights under the

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[10] See Appendix A.

[11] See Appendix C.

[12] See Appendix A.

Constitution of the United States of America.

Certiorari is appropriate in this case to determine:

Does a warrantless arrest by police of a citizen, while in his home after a fruitless search, pursuant to uncorroborated information provided by an arrestee, who was a convicted felon, known by police to be unreliable, violate the provisions of the

Fourth Amendment where the search warrant affidavit was deceptive, in that it contained deliberate lies by the informant, along with intentional misstatements and omissions including omissions regarding the informant's veracity, credibility and basis of knowledge.

When a citizen has both state and federal remedies for violations of his Fourth and Fourteenth Amendment rights, can that state's highest court, on review, create post-trial, an arbitrary, evidentiary rule solely applicable to that case that by its effect, retroactively revokes the state remedy, thereby effectively denying that citizen his federal remedy and the equal protection to which he is entitled under the Fourteenth Amendment.

Is a citizen's Fourth Amendment right to be free from unlawful arrest violated when he is arrested in his home without a warrant by police officers whose conduct when judged by an objective standard would be considered, at a minimum, grossly negligent and most probable as evidencing a reckless indifference to the individual's right?

Is a citizen deprived of liberty within the meaning of the Due Process Clause of the Fourteenth Amendment when he is convicted and serves twenty-five years of a life sentence as a result of the police officers' misconduct in connection with the arrest and the prosecution's failure to disclose exculpatory material in the state's file?

Can a state's highest court, on review, post-trial, effectively eviscerate a person's state tort-law remedy so as to deny that individual adequate redress for injury to which he is entitled under the Fourteenth Amendment?

The Louisiana State Supreme Court's decision decided Fourth Amendment questions that conflict with *Beck v. Ohio; Illinois v. Gates, Franks v. Delaware and Willis v. Jordan*[13], which hold that uncorroborated, untrustworthy information supplied by a convicted felon, who had already been arrested for the crime, cannot provide sufficient probable cause to justify an arrest or a search warrant.

B. SUMMARY OF ARGUMENT

The Louisiana State Supreme Court erroneously held that the arrest of Roland Gibson in his home without an arrest warrant does not violate the provisions of the Fourth Amendment where he was arrested more than two hours after a fruitless search pursuant to a warrant which lacked

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[13] *Beck v. Ohio*, 379 U.S. 89, 91 - 93 (1964); *Illinois v. Gates*, 462 U.S. 213 (1983); *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 667 (1978), *Willis v. Jordan*, 20 R.I. 630, 41 ATL 253 (1898).

probable cause because the search warrant affidavit was deceptive and misleading and contained false statements by the informant, and material misstatements and omissions. The search warrant affidavit does not reveal that West had been convicted of burglary, assault and battery or that he had been previously arrested for illegal possession of a .22 caliber pistol which was the same type of weapon used in the Reinecke murder. The search warrant affidavit contains misstatements and is deceptive in that it states that West's alibis did not check out and that he took a polygraph test, however, it did not reveal that West had first denied any knowledge of the crime on at least four occasions and that he had failed the poly-graph test.[14] The affidavit does not state that West's left middle fingerprint had been lifted from the back window of the victim's cab or that he confessed and named Gibson as the shooter only after being confronted with the information regarding his fingerprint. The affidavit falsely stated that Gibson was in possession of the murder weapon and that he had shot into a lady's apartment and at military police with this weapon.[15] The affidavit truthfully stated that Gibson was AWOL from the Army. Even though Gibson was AWOL the police could not arrest him for that infraction.[16]

The Louisiana State Supreme Court, on rehearing concluded that West's faulty confession was corroborated by Thomas Crayton who had stated that he had seen West and

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[14] *Barefoot v. Estelle*, 463 U.S. 880, 103 S. Ct. 3383, 77 L. Ed. 1090 (1983); *Bennett v. City of Grand Prairie, Texas*, 883 F. 2d 400 (5th Cir. 1989).

[15] See Appendix E and

[16] *Kurtz v. Moffitt*, 115 U.S. 487, 6 S. Ct. 148, 29 L. Ed. 458 (1895).

Gibson together nine hours before the murder, however, Thomas Crayton's statement was not contained in the search warrant affidavit. Furthermore, the statement was provided to the police on March 27, 1968 and Gibson's arrest took place three days later, or on March 30, 1968. The police had three days to secure an arrest warrant. Moreover, the fact that, when questioned by the police three months after the crime, Thomas Crayton mistakenly stated that he saw West and Gibson together nine hours before the murder, is not sufficient information or exigent circumstances to establish probable cause for Gibson's arrest three days later without a warrant.

There is no information in the search warrant affidavit regarding West's veracity, basis of knowledge, or reliability. The affidavit is devoid of Mr. West's general background, employment, personal attributes, position in the community, reputation with others or the police, the probable absence of any motivation for falsity, the presence of West's criminal record, his association with known criminals, the accuracy of the information provided by him in the past, his educational background and that he was also charged as a principal in the Reinecke murder.

The uncorroborated information by West, a convicted felon, who on four previous occasions had denied any knowledge of the Reinecke murder, and failed a polygraph test cannot, under these circumstances, provide sufficient probable cause or a residence search warrant or the warrantless arrest of Mr. Gibson, while he was in his home, whether applying the present totality of the circumstances

analysis under *Gates*[17], or the earlier two prong test in *Aguilar v. Texas*[18] and *Spinelli v. United States*[19].

C. THE LOUISIANA STATE SUPREME COURT REJECTED OUTRIGHT THIS COURT'S BASIS TEST FOR DETERMINING THE SCOPE OF THE FOURTH AMENDMENT.

The common law, from the time our forefathers adopted the Fourth Amendment, has always provided significant, if not decisive, guidance as to what the framers of the Fourth Amendment thought was reasonable probable cause for the issuance of a search warrant, particularly involving the sanctity of the home. No right is held more sacred or is more carefully guarded by the common law than the right to be free of unreasonable searches and seizures.[20]

What has evolved over time is a clear set of rules that were abdicated in this case. The Louisiana State Supreme Court held that the trial court committed manifest error by finding that the police should not have believed West's statements when he implicated Gibson in the murder. The Louisiana State Supreme Court, citing *United States v. Harris*[21] reasoned that West's statements were believable

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17 *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

18 378 U.S. 108 (1964).

19 393 U.S. 410 (1969).

20 *Terry v. Ohio*, 88 S. Ct. 1868, 392 U.S. 120 (1968); *Payton v. New York*, 445 U.S. 573, 591 (1983).

21 403 U.S. 573, 91 S. Ct. 2075, 29 L. Ed. 2d 723 (1971).

because he implicated himself in the Reinecke murder. To the contrary, West told the police only what they already knew. After denying any knowledge of the crime on four occasions by giving false alibis; after failing a polygraph examination; after being told by the police that Crayton stated that nine hours before the crime he was with an AWOL soldier named "Roland"; and after being confronted by police with the fact that his left, middle fingerprint had been lifted from the rear window of the victim's cab, West admitted being at the scene of the crime but named Roland Gibson as the shooter. At the time West implicated Mr. Gibson in the Reinecke murder he was charged as the prime suspect.

> This Court, in *Franks v. Delaware*,[22] in summary stated:
>
> "[W]e hold that, where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit. Id. 98 S. Ct. at 2676-77."

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[22] 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 667 (1978).

While Franks dealt only with misstatements, Judge Coleman in *United States v. Park*[23], recognized that allegations of material omissions were to be treated essentially similarly, to claims of material misstatements. According to *United States v. House*[24]; *United States v. Collins*[25]; *United States v. Lewis*[26]. The affidavit is misleading in that it failed to state that West had actually denied any knowledge of the crime on four occasions. The affidavit further stated that West had taken a polygraph test. The information regarding the polygraph test misled the judge who signed the warrant into believing that West had passed the polygraph test, when in fact he had failed the test. The polygraph test results can be included in a probable cause affidavit[27] but West's test results were not included in the probable cause affidavit to search Gibson's home.

The affidavit is devoid of any indicia of West's credibility or reliability. When we view the affidavit as a whole it is obvious that it does not provide a substantial basis to support probable cause to search Gibson's home. It certainly does not provide probable cause to arrest him after the search failed to turn up the weapon or any other incriminating evidence.

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23 531 F.2d 754, 758 - 759 (5h Cir. 1976).

24 604 F.2d 1135, 1141, N. 9 (8h Cir. 1979).

25 549 F.2d 557, 561 (8th Cir. 1977), *cert. denied*, 431 U.S. 940, 97 S.Ct. 2656, 53 L.Ed.2d 259 (1977).

26 425 F.Supp. 1166,1173 (D. Conn. 1977).

27 *Barefoot v. Estelle*, 463 U.S. 880, 103 S. Ct. 3383, 77 L. Ed. 1090 (1983); *Bennett v. City of Grand Prairie, Texas*, 883 F. 2d 400 (5th Cir. 1989).

In *Illinois v. Gates*,[28] this Court adopted the "totality of the circumstances" test for determining whether a warrant is supported by probable cause. Under *Gates* (supra):

> "The task of the issuing magistrate is simply to make a practical common sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for ... concluding that probable cause existed.
>
> Id. 103 S. Ct. at 2332 [quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L. Ed. 2d 697, (1960)]. In reviewing a warrant therefore, we consider the informant's veracity, reliability and basis of knowledge as important factors, however, a deficiency in one may be compensated for in determining the overall reliability of a tip by a strong showing as to the other or by some other indicia of reliability.
>
> The first consideration by the Court is that the affidavit must demonstrate the veracity and reliability of the informant. Reliability may be established by showing that the informant is a bystander or eye-witness; the second consideration is whether the informant incriminates himself; the third consideration is whether the affidavit demonstrates a sufficient basis of knowledge on the part of the informant."

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[28] 462 U.S. 213, 103 S. Ct. 2317, 2328, 76 L. Ed. 2d 527 (1983).

Citing *United States v. Harris*, the Louisiana State Supreme Court held that West's confession where he implicated himself in the crime and stated that Gibson was the shooter in the robbery and murder was credible because this was his first confession and because he made an admission against his penal interests. Admissions against penal interests are of little value where the informer is speaking under immunity or a deal.[29] This is true under *Illinois v. Gates*[30], however, a flexible totality of the circumstances approach is required. Where an affidavit personally incriminates the affiant or informer by telling the police what they already knew, such an act is viewed as an attempt to curry favor and receive more lenient treatment from the police officers.[31]

In this case, West testified under oath that at the police's insistence he implicated Gibson in the Reinecke murder to avoid capital punishment and to stop the beatings. Other than to stop the beatings and avoid capital punish-

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29 *United States v. Harris*, 403 U.S. 573, 29 L. Ed. 2d 723, 91 S. Ct. 2075 (1971).

30 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

31 *United States v. Jackson*, 818 F. 2d 345 (5th Cir. 1987); *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 23 17, 2328, 76 L. Ed. 2d 527 (1983); Jones v. United States, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L. Ed. 697 (1960).

32 *Beck v. Ohio*, 379 U.S. 89, 91, 85 S. Ct. 223 - 225, 226, 13 L. Ed. 2d 142 (1964), because sufficient probability, not certainty is the touchstone of reasonableness under the Fourth Amendment. *Hill v. California*, 401 U. S. 797, 804, 91 S. Ct. 1106, 1111, 28 L. Ed. 2d 484 (1971), probable cause itself is a doctrine of reasonable probability not certainty. *United States v. Magluta*, 44 F. 3d 1530 (11th Cir. 1995); *Ortega v. Christian*, 85 F. 3d 1521, 1524 (11th Cir. 1996).

ment, he had no other reason for saying that Gibson had committed the murder.

D. PROBABLE CAUSE TO ARREST

Probable cause to arrest exists when the facts and circumstances within the collective knowledge of law enforcement officers or of which they have reasonably trustworthy information, would cause a prudent person to believe that the suspect has committed or is committing an offense." It must be judged not with clinical detachment, but with a common sense view of the realities of normal life.[33]

In this particular case Gibson was arrested at his home more than two hours after a search pursuant to a warrant failed to turn up the weapon or any other incriminating evidence. The .22 caliber weapon the police were looking for was in the possession of West when he gave the police the false information to establish probable cause for the Gibson search-warrant application. The police had ample time, more than two hours, in which to secure an arrest warrant. In *Payton v. New York*,[34] this Court held that absent special circumstances, a warrantless arrest in the home is unconstitutional.

Contrary to *Payton v. New York*[35] this Court also held in *Illinois v. Gates*[36] that probable cause must be deter-

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33 *Kurtz v. Moffitt*, 115 U.S. 487, 6 S. Ct. 148, 29 L. Ed. 458 (1885).

34 445 U.S. 573, 591, 100 S. Ct. 1371, 63 L. Ed. 2d 639

35 (1980). 445 U.S. 573, 591, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).

36 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

mined by the totality of the circumstances. However, an informant's reliability, veracity and basis of knowledge are still, "all highly relevant".[37] Under Gates, a confidential informant may provide adequate information to establish probable cause for a warrantless arrest, so long as the basis for the informant's knowledge and the information's reliability, when examined under the totality of the circumstances, are established. Hearsay statements of anonymous informants may provide probable cause even without corroboration, if there is sufficient circumstances and details to provide a substantial factual basis for concluding that the informant is credible and that the information is reliable and was obtained under circumstances or from sources indicating its veracity, particularly where there is an incentive to lie.[38]

In the present case the record does not establish or even suggest that West's confession was credible and there was no corroboration. The evidence indicates that the police knew the information provided by West was unreliable.

The Louisiana State Supreme Court's conclusion that Thomas Crayton's statement to the police on March 27, 1968 that he had seen West and Gibson together on December 30, 1967 nine hours before the murder, was not contained in the search warrant affidavit. A statement that Gibson was with West nine hours before the murder, even if true, was not sufficient information to obtain an arrest warrant, nor arrest Mr.

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[37] *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317. 76 L. Ed. 2d 527 (1983).

[38] *Morin v. Caire*, 77 F. 2d 116 (5' Cir. 1996).

Gibson without a warrant. Moreover, Gibson's arrest took place three days later, or on March 30, 1968. Since no exigent circumstances can be shown, the police were required to secure an arrest warrant. The search failed to turn up any incriminating evidence and absent exigent circumstances, the arrest was illegal under *Payton* because the "government cannot at the same time justify an arrest by a search or, justify a search by an arrest.[39]

E. THE LOUISIANA STATE SUPREME COURT DENIED PETITIONER'S FEDERAL AND STATE REMEDIES FOR VIOLATIONS OF HIS FOURTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS WITH AN ARBITRARY EVIDENTIARY RULING

Roland Gibson was wrongfully convicted of murder, based on the sole testimony of Lloyd West, as a result of an alleged confession made by West implicating Gibson, which was secured by beatings. West's fingerprint was found at the crime scene. Other than West's alleged confession no other evidence connected Gibson to the crime scene or the crime. Gibson had his mother, mother-in-law, and his wife as alibi witnesses. Furthermore, Mr. Gibson testified in his own defense.

After serving twenty-five years of a life sentence, Gibson secured his release when it was determined that the prosecution did not turn over information to Gibson's attorney indicating that West had lied repeatedly to police prior to

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39 *Johnson v. United States*, 3 3 3 U. S. 10 (1948).

and after giving the alleged confession which implicated Gibson.[40]

After his release, Gibson had the option to seek relief under the federal remedy, **42 U.S.C.A. section 1983**, or a state remedy, **Louisiana Civil Code Article 2315**, for false imprisonment, malicious prosecution, and reckless disregard for his constitutional rights. Given that West was now willing to be truthful, and trusting in the ability of a trial judge to be able to determine the credibility of West or any police witnesses who would be called to dispute his testimony, Gibson chose to pursue his remedy in state court.

West testified at the civil trial that the police beat him in order to obtain a confession, told him they knew he was with "Roland" and forced him to implicate Gibson as his accomplice. West testified that, at that point, he would have given anyone's name to stop the beatings.

The Louisiana State Supreme Court in its per curiam opinion[41] attempted to corroborate, or buttress statements by West in his confession which at the civil trial he testified were lies. Mentioning Thomas Crayton's statement does not cure the lies that West had told at the time of his arrest, nor does it cure the false and misleading search warrant affidavit.

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40 *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

41 See Appendix A at page 794.

The City of New Orleans did not call any witnesses except West to testify at the trial nor was any evidence offered to refute West's testimony. The trial judge found West's testimony to be very credible and gave reasons based on observations that were made during his testimony, and during the course of the trial. In this particular case the trial judge observed Mr. West's demeanor during the three day trial. She questioned Mr. West extensively regarding his 1968 statement and the beatings and rendered a judgment regarding West's civil trial testimony. The trial Judge stated in her Reasons for Judgment that she "found Mr. West to be a very credible witness. He described the beatings and torture in great detail and it was apparent that while testifying he was actually reliving this experience".[42] The Louisiana State Supreme Court did not accord the trial court the "much discretion" that has always been given the findings by the trier of fact, and it ignored the fact that there was no testimony adduced by the City of New Orleans to dispute West's testimony.

To the contrary, the Louisiana State Supreme Court held that the most reliable evidence given by West was the 1968 confession in the police report and his 1968 criminal trial testimony. At the civil trial West admitted that both his 1968 confession and the 1968 criminal trial testimony were lies, coerced by the police. In effect, the Louisiana State Supreme Court created an evidentiary rule, solely applicable to this case, which did not exist at the time the Gibson's filed their lawsuit or at the time of the trial, i.e. West's testimony could only be believed if it supported his alleged voluntary

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[42] See Appendix C.

confession. Thus, Gibson had no post-deprivation due process remedy in that the testimony offered by West at the trial which the Court concluded to be "very credible" was not accorded any weight by the Louisiana State Supreme Court. The Louisiana State Supreme Court completely ignored West's civil trial testimony that his confession and 1968 criminal trial testimony were lies and arbitrarily concluded that the confession and criminal trial testimony should be believed over the testimony that he provided in the 1993 criminal proceedings.[43]

Finally, petitioners were prevented from exercising their federal remedy for the violations of Gibson's Fourth and Fourteenth Amendment rights because the Louisiana State Supreme Court, ignored the law on the standard of review, by arbitrarily setting aside corroborated, uncontradicted, credible evidence on appeal, thereby failing to provide petitioner equal protection under the law which retroactively revoked petitioners' state court remedy years after the choice of forums had been made.

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43 *Borsky v Board of Regents of N. Y*, 347 U.S. 442, 98 L.Ed. 829, 74 S. Ct. 650 (1954); *Provident Savings and Loan Association Society v. Kentucky*, 239 U.S. 103, 36 S. Ct. 34, 60 L. Ed. 167 (1915); *Grannis v. Ordean*, 234 U.S. 385, 345 S. Ct. 779, 58 L. Ed. 1363 (1914); *New York & Queens Gas Company v. McCall*, 245 U.S. 345, 38 S. Ct. 122, 62 L. Ed. 337 (1917).

XI.

CONCLUSION

The Petition for a Writ of Certiorari should be granted and the Judgment of the Louisiana State Supreme Court should be summarily reversed. Alternatively, the Court should grant plenary review of the Judgement below.

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No.

In the Supreme Court of the United States

ROLAND GIBSON, SR., JESSE GIBSON,
ROLAND GIBSON, JR. and DENNIS GIBSON
PETITIONERS

vs.

THE CITY OF NEW ORLEANS and LLOYD WEST
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA STATE SUPREME COURT

APPENDIX VOLUME I
Appendix A - Appendix D

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APPENDIX A

768 SOUTHERN REPORTER, 2d SERIES

99-1730 (La. 4/11/00)

Roland GIBSON, Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson

The STATE of Louisiana, John St. John and Lloyd West.

No. 99-C-1730.

Supreme Court of Louisiana.

April 11, 2000.

Concurring Opinion of Chief Justice Calogero, April 25, 2000

Opinion Denying Rehearing June 16, 2000.

Innocent person who had, been wrongly convicted brought "on against city and co-defendant in criminal case to recover for false arrest and imprisonment and malicious prosecution. The Civil District Court, Parish of Orleans, No. 93-2517, Carolyn Gill-Jefferson, J., entered judgment in favor of innocent person and family members. City and co-defendant -appealed. The Court of Appeal, Mees, C.J., 731 So-2d 879, affirmed as amended. Certiorari was granted., The Supreme Court, Traylor, J., held that: (1) police had

probable cause for arrest, and (2) indictment and conviction conclusively proved probable cause for arrest and precluded claim against city for false arrest. On rehearing, the Supreme Court also held that the trial court improperly credited the perpetrator's recantation alleging that the police, beat the perpetrator into accusing an innocent. person.

Reversed.

Lemmon, J.-I concurred and assigned reasons.

Calogero, C.J., concurred and assigned reasons.

Mavis Slattery Early, Annabelle H. Walker, Franz L. Ziblich, New Orleans; Counsel for Applicant.

Matthew B. Collins, Jr., Thomas A. Early, Jr., Catrice Ann Johnson, Maurice Anthony Williams, Dianne Jones Marshall, New Orleans, Counsel for Respondent.

Gerald Joseph Nielsen, Counsel for Louisiana Municipal Association, Louisiana Association of Chiefs of Police (Amicus Curiae).

TRAYLOR, Justice.*

In 1968, Plaintiff, Roland Gibson was convicted of first degree murder and received a life sentence. He subsequently filed an application for post conviction relief and, in

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* JOHNSON, J., not on panel. See Rule IV, Part 2, § 3.

1993, was granted a new trial based upon the failure of the District Attorney to furnish *Brady* material. Lloyd West, the sole witness testifying against Gibson, recanted his previous testimony and confession wherein he implicated Gibson as the triggerman in the murder. Gibson, his wife, and two sons filed the instant suit for false arrest and imprisonment, malicious prosecution, and personal injury for Gibson's twenty-five-year incarceration. Without Wests testimony, the District Attorney entered a *nolle prosequi* as to Gibson's indictment on March 31, 1993.

After the civil trial in the instant matter, the trial court found the Police lacked probable cause for Gibson's 1967 arrest and awarded Plaintiffs in excess of eleven million dollars in damages. The trial court apportioned ninety percent of the fault to the City and ten percent to West. The City and Lloyd West appealed. The court of appeal affirmed the trial court, but amended fault to include that attributable to the District Attorney under La. Civ.Code art. 2323. The court of appeal apportioned forty-five percent of the fault to the State, forty-five percent to the City, and ten percent to West. The City sought writs with this court.

We granted writs to determine whether, after being duly convicted of a crime and later released, a party may succeed in a suit for civil damages against the municipality for his arrest, prosecution, and incarceration on, the basis of an alleged wrongful arrest. After a thorough review of the applicable law and the entire record, we answer this question in the negative. We hold that the City cannot be found at fault for Plaintiffs alleged wrongful arrest and prosecution

and, therefore, vacate the contrary findings of the lower courts.

FACTS AND PROCEDURAL HISTORY

Murder Investigation and Trial

On December 30, 1967, at approximately 8:30 p.m. Charles Reinecke, Jr., a New Orleans Yellow Cab driver, was shot and killed in his taxi during an armed robbery. On January 1, 1968, the New Orleans Police (Police) completed an Offense Against Person Case Report detailing that an unknown five-foot, eleven-inch tall white male, twenty-five to thirty years of age, and weighing approximately 160 pounds was wanted in connection with the investigation, "for, questioning only." The Police lifted a fingerprint from a rear cab window and later determined it belonged to Lloyd West.

West, who was already in Police custody for an unrelated crime, initially denied any knowledge of the incident and gave the names of two persons with whom he claimed to have been at the time of the murder. These individuals denied being with West. West named a third individual, Thomas Crayton, who denied being with West at the time of the murder but informed the Police that on December 29, 1967 West and an AWOL[1] Army soldier named "Roland" spent the night at his home. Crayton stated that he left West and "Roland" at his home when he left at noon on December 30, 1967. The Police contacted the Army and confirmed that

[1] AWOL is the military acronym for "absent with-out leave."

as of 7:00 a.m. on December 30, 1967, a soldier named Roland Gibson was reported AWOL from his company in Fort Campbell, Kentucky, and could have been missing for up to forty-eight hours.[2]

West was again interviewed and confronted with the discrepancies in his statements. At this point, he changed his story and claimed he was with his mother at the time of the murder. His mother was summoned to the police station, refused to be his alibi, and told Police that her son was lying. The Police apprised West of his mother's statement and asked him to submit to a polygraph test. Only after the polygraph test indicated deception did West confess his involvement in the murder and implicate Gibson as the triggerman. West repeated this confession on video, in the presence of his mother and uncle. West told Police that the murder weapon, a gun, was under a mattress at Gibson's residence.[3]

On March 80, 1968, the Police obtained a search warrant for Gibson's residence, and served it on Gibson's mother. During the search, the Police found no weapon but remained at the residence and arrested Gibson when he arrived home at 6:20 a.m. intoxicated from a night of drinking. The Police arrested Gibson and took him to the police station. On the afternoon of March 31, 1968, the Police

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[2] The Army confirmed to the Police that Gibson was paid on December 29, 1967 and that he was AWOL as of 7:00 a.m. on the -morning of December 30, 1967. The Army told Police that Gibson had not been seen on base after noon on December 29, 1967 and could have left any time thereafter.

[3] Later, West confessed that the gun was at his home. The gun was never retrieved.

attempted to interrogate Gibson but found Gibson remained intoxicated. On April 1, 1968, Gibson was advised of his rights and questioned by the Police. He repeatedly denied any knowledge of the murder. and claimed to have left Fort-Campbell by bus at 10:00 p.m on the day of the murder. According to this story, Gibson could not have reached New Orleans by the time of the murder. Gibson told Police he arrived in New Orleans at approximately 3:00 am. the day after the murder. In an attempt to corroborate his story, Gibson told Police he was paid on the morning of December 30, 1967 but later produced an Army pay stub showing he was in fact paid on December 29, 1967. Gibson also produced a bus ticket which bore a date that did not substantiate his story. When confronted with conflicting information provided by the Army, Gibson admitted he was paid on December 29, went AWOL, and arrived in New Orleans before the murder took place.

On May 10, 1968, the Police concluded their investigation and turned all evidence and reports over to the District Attorney. The District Attorney did not provide the defense with the supplemental police report which detailed the numerous conflicting stories and alibis West provided the Police before he confessed and implicated Gibson in the murder.

Gibson and West were indicted for first degree murder. At Gibson's criminal trial, West testified that although he participated in the murder, Gibson was the triggerman. For the first time, Gibson, his wife, and his mother related that Gibson was alternately with his mother and wife the entire night of the murder. When asked the reason for their

failure to inform the Police of this alibi during the pendency of the investigation and Gibson's incarceration, the Wife and mother responded that they were never asked to do so. Several police officers testified that Gibson had given a different alibi when he was questioned in 1968. Following trial, the jury found Gibson guilty as charged and sentenced him to life imprisonment at hard labor. Two days later, West pled guilty to first degree murder, was sentenced to life imprisonment, and remains incarcerated.

Throughout the years, West and Gibson have filed appeals and numerous requests for post conviction relief.[4] On June 8, 1985, Gibson drew up and gave West an affidavit to sign that recanted his prior testimony. In the affidavit, West swore that he lied at Gibson's trial and falsely accused Gibson to avoid receiving the death penalty. West signed the affidavit and, since that time, maintains Gibson was neither present during nor his accomplice in the murder.

Hearings on Application for Post Conviction Relief

In 1992, approximately seven years after Gibson effected West's affidavit and twenty-four years after his conviction, Gibson filed the instant application for post conviction relief and, for the first time, revealed West's June 8, 1985 affidavit. In it, Gibson claimed the District Attorney

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[4] Gibson's reported prior appeals include *State ex rel. Gibson v. Henderson*, 258 La. 352, 246 So.2d 199 (1971); *State v. Gibson*, 271 So.2d 868 (La.1973);*State ex rel. Gibson v. Blackburn*, 383 So.2d 794 (La.1980); *State ex rel. Gibson v. Blackburn*, 479 So.2d 360 (La. 1985); *Gibson v. State*, 94-0476 (La.App. 4 Cir. 10/27/94), 644 So.2d 1148.

withheld a supplemental police report containing exculpatory *Brady* material;

The criminal court held three hearings on Gibson's motion for-post conviction relief. West's testimony and the supplemental police, report entered into evidence at the hearings held on October 23, 1992 and December 18,1992. At the third and final hearing held on February 16, 1993, West testified that during their incarceration at Angola Penitentiary, he and Gibson had frequently discussed and eventually concocted a plan to get out of prison. This plan culminated in Gibson's presentation of the affidavit to West for his signature and Gibson's application for post conviction relief. At the hearing, West represented for the first time that a man named George Carter, not Roland Gibson, was the trigger man. West stated he had not previously implicated George Carter because the Police beat him into submission of a statement implicating Gibson.[5]

The presiding judge granted Gibson's application for post-conviction relief, finding that the District Attorney withheld the supplemental Police report, which contained exculpatory *Brady* material in the form of West's numerous conflicting statements to Police and could have denied Gibson a fair trial. The judge ordered a new trial. The

5. The trial court, in its reasons for judgment, mentioned Gibson's contention that West was beaten into submitting the confession wherein he implicated Gibson. The court then repeatedly criticized the Police for believing West, a "convicted felon," over Gibson. The trial court would not have criticized the Police for believing West over Gibson if it found that the Police had forced the confession' Following the trial court's criticism of the Police to its logical conclusion, we must find that the trial court was not convinced that West was beaten.

District Attorney, bereft, of the testimony of its sole witness, West, entered a *nolle prosequi* as to Gibson's indictment on March 31, 1993. Thereafter, Gibson was released from prison.

Civil Trial

On February 12, 1993, the Plaintiffs, Roland Gibson, his wife and two sons, filed the instant civil suit against the State of Louisiana, Lloyd West, the New Orleans District Attorney's Office, and the City [6] seeking damages for false arrest and imprisonment, malicious, prosecution, and personal injury in connection with Roland Gibson's twenty-five-year incarceration. The trial court found the State and District Attorney to be immune under La. Rev. Stat. 42:1441 A and dismissed all claims against them. On February 18, 1998, after a bifurcated trial, the trial court found the Police "did not have reasonable and trustworthy information sufficient to believe Mr. Gibson had committed a crime." The court rendered judgment awarding Plaintiffs a total of $11,674,624, with fault allocated ten percent to West and ninety percent to the City.

The City appealed, asserting the trial court erred in finding no probable cause existed for the arrest of Gibson, in holding the City was liable for damages allegedly occasioned upon Plaintiffs for Gibson's false arrest, conviction, and twenty-five year incarceration, and in allocating ninety percent of the fault to the City. The court of appeal,

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6. Also named were a fictitious Assistant District Attorney and a fictitious insurance company, who are no longer parties to this suit.

amended fault to include comparative fault of the District Attorney regardless of immunity as required by the La. Civ.Code art. 2323.[7] 98-1100 (La.App. 4 Cir. 2/4/99), 731 So.2d 379. The court of appeal found "the trial court erred in holding the Police, rather then [sic] the District Attorney, primarily liable for Gibson's wrongful conviction and incareeration" and re-apportioned forty-five percent of the fault to the State, forty-five percent to the City, and ten percent to West. The court of appeal affirmed the remainder of the trial court judgment. The City sought writs with this court.

STANDARD OF REVIEW

[1-3] The proper standard of review is whether the trial court committed an error of law or made a factual finding which is manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So.2d 840 (La.1989). If the trial court's decision is reasonable in light of the record reviewed in its entirety, this court may not reverse even if we would have weighed the evidence differently. *Id.* Where there is no dispute of fact, the question of probable cause is a question of law. *Crescent City Live-Stock Landing and Slaughter-House Co. v. Butchers Union Slaughter House and Live Stock Landing Co.*, 120 U.S. 141, 7 S.Ct. 472, 30, L.Ed. 614 (1887)

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[7] Art. 2323(a) provides in pertinent part:

> In any action for damages where a person suffers injury, death, or loss, *the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined*, regardless of whether the person is a party to the action or a nonparty, and *regardless of the person's in solvency, ability to pay, immunity by statute.* ...(Emphasis Added)

(citing *Stewart v. Sonneborn,* 98 U.S. 187, 25 L.Ed. 116 (1878)). The facts of this case are not disputed, therefore, this court must determine whether the lower court was manifestly erroneous in finding the Police lacked probable cause to arrest Gibson.

Upon a thorough review of the trial transcript, record, and judgment, we find the trial court's judgment was not reasonable and that it committed manifest error in finding liability on the part of the City for false arrest.

LAW AND DISCUSSION

The main issue presented for review is whether a municipality, through its police department, may be held liable in tort for wrongful arrest after the arrestee has been indicted, prosecuted, found guilty, and convicted of the crime with which he was charged. Implicit in this inquiry is the question of whether the fact that the Plaintiff had been arraigned, indicted, and convicted based upon the criminal court's satisfaction that the probable cause standard was met conclusively proves probable cause existed at the time of the arrest. To examine this issue, we first will embark on an examination of the probable cause standard.

Probable Cause to Arrest

[4, 5] At the outset, we note without hesitation that no police officer should fear that doing his duty in good faith will subject him to liability. An officer satisfies his duty of good faith in making an arrest if the arrest is based on probable cause. Probable cause exists when the facts and cir-

cumstances within the arresting officer's knowledge, and of which he has reasonable and trustworthy information, are sufficient to justify a man of average caution in the belief that the person to be arrested has committed or is committing an offense. B*eck v. Ohio*, 379 U.S. 89, 85, S.Ct. 223, 13 L.Ed.2d 142 (1964); *Miller v. East Baton Rouge Parish Sheriff's Dep't* 511 So.2d 446, 452-53 (La.1987); *State v. Wilson*, 467 So.2d 503 (La.1985).

[6-9] The determination of probable cause, unlike the determination of guilt at trial, does not require the fine resolution of conflicting evidence required at trial, and credibility determinations are seldom crucial in deciding whether available evidence supports a reasonable belief that the person to be arrested has committed a crime. *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *State v. Rodrigue*, 437 So.2d 830 (La.1983); *State v. Simms*, 571 So.2d 145, 148 (La.1990). Probable cause, as the very name implies, deals with probabilities. *Brinegar v. United States* 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949); *Simms,* 571 So.2d at 148. The probable cause standard recognizes that a degree of uncertainty may exist and that an officer need not have sufficient proof to convict but must have more than a mere suspicion. *State v. Guidry*, 388 So.2d 797 (La.1980); *State v. Lehnen*, 403 So.2d 683, 687 (La.1981); *State v. Herbert* 351 So.2d 434 (La.1977). The facts need not eliminate all possible innocent explanations in order to support a finding of probable cause. *Lehmen*, 403 So.2d at 687; *State v. Phillips*, 347 So.2d 206 (La.1977).

[10-121 While verification may be required to establish probable cause where the source of the information

seems untrustworthy, it is well established that the reputation of the accused, his opportunity to offer explanation, and the need for prompt action are all factors in determining whether unverified information furnishes probable cause. *Miller*, 511 So.2d at 452-53; *Hibernia Nat'l. Bank v. Bolleter*, 390 So.2d 842 (La.1980). However, admissions of criminal activity carry their own indicia of reliability sufficient to support a finding of probable cause. *United States v. Harris*, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971); *State v. Mena*, 399 So.2d 149 (La.1981); *State v. Welsh*, 371 So.2d 1314 (La.1979); *State v. Mena*, 344 So.2d 357 (La.1976). Where a person confesses to a crime, the confession and implication of another is to be deemed highly credible and *more* reliable and trustworthy than previous statements disavowing any knowledge of the murder, because confessions are statements against penal interest. *See Mena,* 399 So.2d at 152.

[13] Applying these precepts, as the trial court, we will determine whether the Police had probable cause to arrest Gibson. First and foremost, probable cause for the arrest and conviction were met to the satisfaction of the criminal court. The civil trial court re-tried the evidence upon which Gibson was convicted and apparently equated the standard of proof of probable cause with proof necessary to prove guilt at trial. However, this was not the duty nor the task before the trial court, and it appears the trial court misapplied that law.

In its reasons for judgment, the trial court asserted five reasons why it found the Police lacked probable cause to arrest Gibson: 1) the Police report detailed that a white

male was "wanted for questioning only," a description which did not fit Gibson; 2) the Police reports did not mention two individuals were suspected of committing the crime; 3) there was no physical evidence against Gibson; 4) the Police believed West, a "convicted felon;" and 5) the Police failed to contact Greyhound to secure an alibi on Gibson's behalf.

[141 After a thorough analysis of these points, we find no merit to any of the reasons for judgment and address each one in turn. First, the fact that the Police report contained the physical description of a white male wanted "for questioning only" does not refute the existence of probable cause for Gibson's arrest in light of other evidence against Gibson. The police report did not specify whether the white male was a suspect in the murder or merely a witness of some kind. Under *State v. Phillips* and *State v. Lehnen,* the Police do not need to eliminate all Possible innocent explanations in order to support a finding of probable cause. For this reason, we find the trial court erred in this finding.

[15] Second, we do not find compelling the trial court's desire for an "explanation in police reports as to why or when police [concluded] that the crime was committed by two individuals rather than one." The Police are not precluded from arresting those whom they reasonably believe to have committed a crime and need not restrict themselves to investigating, questioning or arresting only those individuals they have previously designated as suspects in their reports. As evidence avails itself, the Police are required to act on that evidence and arrest any individual they reasonably suspect of having committed a crime. This is a basic tenet of the probable cause standard.

[16, 17] Third, regarding the trial court's requirement of physical evidence to arrest, clearly, just as an individual be convicted solely on circumstantial evidence, so too can probable cause exist without physical evidence linking an individual to a crime. Under *Beek v. Ohio* and its progeny, the probable cause standard does not require the police to have direct, physical evidence; it only requires that the reasonable and trustworthy facts and circumstances within the arresting officer's knowledge are sufficient to justify a man of average caution in the belief that the arrestee has committed a crime. The trial court erred in requiring physical evidence to prove probable cause for the arrest.

Fourth, the trial court's repeated criticism of the Police for believing West's statements are disingenuous at best because the trial court later found West to be "a highly credible witness." The court cannot in one breath chastise the Police for their reliance on the statements of a "convicted felon" and in the next breath hold in high esteem the same individual's candor. Under *State v. Mena*, the most reliable and honest statement made by West in these entire proceedings is his 1968 confession and implication of Gibson in the murder. In light of all the reasonably reliable facts known to the Police at the time of the arrest,[8] the trial court erred in

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[8] The following facts were known to the Police at the time of the arrest and upon which they based that arrest: West implicated Gibson in his confession which was, as earlier discussed, properly regarded by the Police as highly credible under *State v. Mena*, regardless of West's prior false statements. This alone provided Police sufficient probable cause to effect a valid arrest. Further fortifying the existence of probable cause for the arrest, the Police received information from Mr. Crayton and the Army that corroborated the Police's belief that Gibson was in New Orleans and with West on the day of the murder. Gibson had no valid

finding otherwise.

[18] Lastly, the trial court censured the Police for not contacting Greyhound to substantiate Gibson's alibi. Under *State v. Lehnen* and *State v. Phillips*, the Police need not exhaust all innocent explanations in order for probable cause to exist. Furthermore, Gibson later admitted he was in town at the time of the murder, so the Police's alleged failure is irrelevant. The trial court erred in unjustifiedly placing this burden upon the Police.

Under our analysis, each, of the trial courts' reasons for judgment fail and we find the civil trial court committed manifest error in re-determining the probable cause issue. Plaintiffs failed to prove that no reasonable police officer would have concluded probable cause was present.

[19,20] All information known to the Police at the time of Gibson's arrest was sufficient to justify a man of ordinary caution in believing Gibson had committed a

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(footnote 8 continued)
alibi and those he attempted to provide Police never materialized. The witnesses' statements against Gibson were uncontradicted and further bolstered the Police's reasonable belief that Gibson was involved in the murder, providing probable cause. As previously discussed, the trial court erred in finding West's inconsistent statements and confession negated the existence of probable cause for Gibson's arrest. It is not uncommon for an accused to deny guilt when first questioned by the Police. However, we consider the information provided by West in his confession to be more reliable and trustworthy than his previous conflicting statements because his confession was a statement against penal interest which carried its own indicia of reliability sufficient to support a finding of probable cause.

crime. See n. 8. Furthermore, probable cause was conclusively proven by Gibson's indictment and conviction in the criminal case. It is well settled that an indictment is conclusive proof of probable cause which connotes that probable cause existed for the underlying arrest. *Gerstein v. Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *State v. Holmes* 388 So.2d 722, 724 (La.1980); *State v. Howard*, 325 So.2d 812 (La.1976); *State v. Pierre*, 606 So.2d 816, 820 (La.App. 3 Cir.1992); *State v. Clark*, 581 So.2d 747 (La.App. 4 Cir.1991); *State v. Johnson*, 529 So.2d 466 (La.App. 1 Cir. 1988). After indictment or conviction, the defendant can no longer allege lack of probable cause for his arrest. The jurisprudence of this state allows civil damages for false arrest only where there has been insufficient probable cause to sustain the arrest and the party has not been convicted of the crime with which they were charged. *Winn v. City of Alexandria*, 96-0492 (La.App. 3 Cir.1996), 685 So.2d 281; *Miller*, 511 So.2d at 451. Our research has indicated no reported cases where civil liability was found where the plaintiff was found guilty and convicted of the crime for which he later filed such a civil action.

[21,22] Because the standard of proof for the determination of probable cause for a criminal case is more onerous than that for a civil case, it is, therefore, not the province of the civil court to later second-guess or redetermine this finding after the convict has been released, acquitted, or *nolle prosequied*. Absolute certainty of conviction is not the benchmark by which probable cause is determined, and we decline to go so far even where, as in this case, the conviction is later overturned and Plaintiff was not again convicted of the crime. Consequently, we conclude that probable cause existed at the time of Plaintiff's arrest and thereafter,

notwithstanding the fact that plaintiff was granted post conviction relief and his indictment *nolle prosequied.*

Upon a thorough review of the record, we find the Police had probable cause to arrest Plaintiff. The trial court committed manifest error in finding the Police lacked probable. We, likewise, find the court of appeal erred in affirming the trial court. For these reasons, we reverse the trial court and court of appeal finding of fault on the part of the City for Plaintiff's judgment.

CONCLUSION

Based on the totality of the circumstances, the Police had probable cause to believe Gibson had committed first degree murder and were therefore justified in arresting him. The trial court and court of appeal erred in assessing any fault to the city. Therefore, we reverse the portions of rulings of the civil court and court of appeal finding the Police liable false arrest based upon a lack of probable cause.

DECREE

REVERSED.

LEMMON, J., concurs and assigns reasons.

CALOGERO, C.J., concurs and assigns reasons.

LEMMON, J., Concurring.

Although the majority frames the issue in this case as whether a party who has been convicted of a crime may

recover civil damages based on his allegedly wrongful arrest, this decision should not be taken as holding that the conviction precludes recovery even if a wrongful arrest is proved.[1] The critical issue is whether the police had probable cause to arrest plaintiff at the time he was arrested, and not whether the State had sufficient evidence to convict him eight months after his arrest.

The majority correctly determines that there was probable cause to arrest plaintiff at the time of the arrest. However, if probable cause had not existed at the critical time and an investigation subsequent to the arrest had developed evidence to support the eventual conviction, plaintiff would be entitled to some amount of damages for wrongful arrest,[2] irrespective of the fact that he was subsequently convicted.

CALOGERO, C.J., concurring.

Mistakes happen in our less-than-perfect criminal justice system. Occasionally, innocent people serve time. Some people serve their entire sentence, and others, after serving a portion of their sentence, find relief through conclusive proof of innocence, or through a post-conviction proceeding that is simply designed to maintain a fair system, not necessarily to establish innocence. In either event,

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[1] If the conviction was a determinative bar to recovery, it would not be necessary to discuss whether probable cause existed at the time of the arrest.

[2] Of course, the amount of damages in such a case would not be significant, inasmuch as plaintiff's only damages would be for being arrested a few days or weeks earlier than he legally could have been arrested.

proven Innocence or faulty process in securing the conviction, the State, some other public institution, or public officers are sometimes sued for recompense for harm caused by wrongful conduct or negligence on the part of their agents.

Counterbalanced against the law's affording relief in the form of monetary damages arising out of failures in the criminal justice system is a fear that the State will be subject to a flood of litigation and huge judgments threatening to drain its resources for the negligence and misdeeds of criminal justice agents while performing their jobs, as well as the fact that exposure to damage awards my have a chilling effect on vigorous prosecutions. It is for this reason that the legislature has seen fit to grant immunity to the State for the damages caused by district attorneys with-in the course and scope of their official duties. La.Rev.Stat, 42:1441. Related that determination by the legislature, this Court has ruled that a prosecutor entitled to absolute immunity from malicious prosecution suits "when the activities complaint of fall within the scope of the prosecutor's role as an advocate for the state and are intimately associated with the conduct of the criminal process." *Knapper v. Connick,* 96-0434, p. 10 (La. 10/15/96), 681 So.2d 944, 950.[1]

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[1] Likewise, prosecutors sued for alleged civil rights violations under 42 U.S.C. § 1983 have absolute immunity for acts done within the scope of the prosecutors' duties during criminal prosecutions. Imbler v. Pachtman, 424 U.S. 409, 427, 96 S.Ct. 984, 993, 47 L.Ed.2d 128, 142 (1976). However, prosecutors do not have absolute immunity, although they may have qualified immunity, for their misconduct in fabricating evidence and shopping for a favorable expert witness to establish probable cause for arrest because those acts are "administrative" rather than quasi-judicial. Buckley v. Fitzsimmons, 509 U.S. 259, 276, 143 S.Ct. 2606, 2617, 125 L.Ed.2d 209, 228 (103). Furthermore, the United

On the other hand, State agencies or political subdivisions, *e.g.*, municipalities, are not afforded the same immunity. Thus, in the instant case, although the State does not have to pay for bad or substandard district attorney conduct, the City has to pay for its police officers' actions, provided Plaintiff bears his burden of showing that his damages were a consequence of the police officers' negligence or other fault-based conduct.

In 1992, in response to Plaintiff's sixth application for post-conviction relief, Orleans Parish Criminal District Court Judge Calvin Johnson ordered a new trial for Plaintiff, not because of Lloyd West's, the coperpetrator's, seven-year-old recantation,[2] but rather, because of a Brady violation in which Judge Johnson found that the district attorney had withheld exculpatory evidence contained in a supple mental police report. The Judge, in granting Plaintiff relief, did not address the issue of whether the police officers had probable cause to arrest Plaintiff. Subsequently, the district

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(footnote 1 continued)
States Supreme Court has recognized that police officers have qualified immunity from 42 U.S.C. § 1983 liability for wrongful arrests. *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). In *Malley*, the Court held that police officers are not immune if a reasonably well-trained officer would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant. *Malley*, 475 U.S. at 345, 106 S.Ct. at 1098, 89 L.Ed.2d at 281.

[2] On January 28, 1968, approximately one month after Charles Reinecke, Jr.'s murder, the police matched a partial fingerprint found on the left rear window of the victim's taxicab with Lloyd West's fingerprint. Subsequently, on March 29, 1968, following a polygraph test that indicated "deception," Lloyd West finally admitted his involvement in Reinecke's murder, but was adamant that Plaintiff was his accomplice and was the triggerman. At Plaintiff's criminal trial, West testified that

attorney entered a *nolle prosequi* because of the problems associated with prosecuting a twenty-five-year-old murder without the benefit of key witness testimony. Plaintiff, therefore, won his freedom.

In 1993, at the civil trial, the result of which 9is now under review, with the State already dismissed from the suit because of its statutory immunity from damages caused by district attorneys within the course and scope of their official duties,[3] the trial judge premised the City's liability on the police officers' lack of probable cause to justify Plaintiff's arrest. It was at this late stage (the civil trial in 1993) that the civil court judge found probable cause lacking for Plaintiffs arrest. Consequently, the issues presented in this case in reviewing the judgment of the civil district court are (1) did the police officers have probable cause to arrest Plaintiff, (2) if not, were they at fault in arresting Plaintiff and, (3) are the officers liable, and the City vicariously liable, for Plaintiff's twenty-five years of incarceration, and was Plaintiff's impairment caused by the assumedly wrongful arrest.

(footnote 2 continued)
Plaintiff was the gunman.

In 1985, Lloyd West, who was (and remains to this day) incarcerated since 1968 after pleading guilty to first degree murder and sentenced to life imprisonment for Reinecke's murder, signed an affidavit produced by Plaintiff wherein West swore that he lied at P/'s trial regarding Plaintiffs involvement in the murder "in order to bypass the electric chair."

[3] On October 27, 1994, the Louisiana Fourth Circuit Court of Appeal affirmed the trial judge's dismissal of the State has State's exception of no cause of action Fourth Circuit ruled that "the District Attorney I s Office is not the State and the State is not liable for the acts of the District Attorney or his employees. See, La.Rev. Stat.Ann. § 42:1441

I concur in the judgment in favor of the City because the law and the evidence do not support the district court's ruling in this civil case. If Plaintiff's arrest by the New Orleans Police Department was without probable cause, then that misdeed or police officer failure may have caused or contributed to Plaintiff's short, legally unsupportable period of confinement following his arrest. Following that brief period–Plaintiff's arrest to the issuance of the indictment–the district attorney alone, with the evidence assembled and during the conduct of the trial, was responsible for Plaintiff's prosecution and conviction.[4] Assuming Plaintiff was wrongfully arrested, and assuming the prosecutor procured Plaintiff's conviction and incarceration by misconduct or negligence on his part, the City would not likely be liable for more than a minimal sum for the short period of confinement prompted but the police officers' arrest without probable cause.

More significantly, however, the evidence in this case does not support the trial judge's determination that the police officers did not, have probable cause to arrest Mr. Gibson~ for the armed, robbery and murder of Charles Reinecke, Jr. Of course, a custodial arrest must be supported by probable cause. *Dunaway v. New York,* 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979). Generally, probable cause for a warrentless arrest exists when the facts and cir-

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(footnote 3 continued)
(A) (West 19990)." Gibson v. State of Louisiana, 94-0476, p. 5 (La.App. 4th Cir. 10/27/94), 644 So.2d 1148, 1150.

4 In this regard, that is, district attorney fault, Criminal District Court Judge Johnson's finding of a Brady violation has relevance.

cumstances known to an arresting officer are sufficient to justify a man of ordinary caution to believe that the person to be arrested has committed a crime. *Beck v. Ohio*, 379 U.S. 89,91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964); *State v. Scales,* 93-2003, p. 6 (La. 5/22/95), 655 So.2d 1326, 1333; La.Code Crim.Proc.art. 213. This Court has made clear that "the determination of reasonable grounds for an investigatory stop, or probable cause for an arrest, does not rest on the officer's subjective beliefs or attitudes but turns on a completely objective evaluation of all of [the] circumstances known to the officer at the time of his challenged action." *State v. Kalie*, 96-2650, p. 1 (La.9/19/97), 699 So.2d 879 880 (emphasis in original) (*citing Whren v. United States,* 517 U.S. 806, 116, S.Ct. 1769, 135 L.Ed.2d 89 (1996)).

Although there may have been some evidence, gathered during the early part of the investigation, which did not implicate Plaintiff, other evidence, did strongly point to Roland Gibson., On the negative side, the initial police report indicated that the police were looking for an unknown white male, twenty-five to thirty years old, five feet eleven inches tall, with blond hair for questioning. Nevertheless, on the positive side, the police had the evidence of Lloyd West's fingerprint found on the inside of the victim's cab and, West's statement implicating Plaintiff's as the gunman. Additionally, the police were able to corroborate these pieces of evidence with the statement of Thomas Crayton, who explained that he saw West and a friend named "Roland," an alleged AWOL Army soldier, which description fits Plaintiff, together in an apartment shortly before noon on December 30, 1967, just hours before the murder. Thus, the information available to the police at the time they

chose to arrest Plaintiff established probable cause. *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

Accordingly, I agree with the majority opinions conclusion that the City of New Orleans is not liable for Plaintiff's damages.

ON APPLICATION FOR REHEARING

PER CURIAM**

On application for rehearing, plaintiff raises two substantial issues:

Effect of Conviction on Recovery of Damages for False Arrest

Plaintiff takes issue with this court's statement on original hearing that an indictment is conclusive proof of probable cause to arrest and that the plaintiff is an action based on damages for false arrest cannot allege lack of probable cause for the arrest if the plaintiff had been indicted or convicted.[1] Plaintiff contends that this statement conflicts with the decision in Jones v. Soileau, 448 So.2d 1268

** Johnson, J., not on panel. Rule IV, part § 3.

[1] The statement that "[a]fter indictment or conviction, the defendant can no longer allege lack of probable cause to arrest" is clearly correct in a criminal proceeding in which the accused, after conviction, contends an appeal that the trial court erred in finding probable cause at the preliminary examination. *See State v. Sweeney*, 443 So.2d 522, 531 (La. 1983).

(La.1984)("The crucial determination [in a malicious prosecution action] is whether [the defendant] had an honest and reasonable belief in the guilt, of [the plaintiff] at the time he pressed charges")(emphasis added).

We need not resolve this issue. The Challenged statement, made on original hearing, was not necessary to the decision, because probable cause did exist at the time of arrest, as noted in the majority and concurring opinions on original hearing. The only real question about the existence of probable cause at the time of arrest was whether Lloyd West's statement implicating defendant as triggerman was coerced by the police.

West's Allegedly Coerced Statement

[23] At the time of the arrest, the Police had (1) the statement of Lloyd West implicating plaintiff as a participant with West in the murder and (2) corroboration for West's statement by the fact that West, and plaintiff were seen together nine hours before the murder. If the police had an honest and reasonable belief in the accuracy of the statement, they had probable cause to arrest plaintiff.

West testified in the present civil action that the police coerced him to implicate plaintiff by beating him and forcing him to make the statement, and the trial judge expressly credited West's testimony about the beating. If the police indeed beat West into implicating himself and plaintiff in the robbery and murder, then the police did not have a good faith reasonable belief in the accuracy of West's state-

ment, which they used as a basis for probable cause to arrest plaintiff.

In the 1969 proceeding against West (that culminated in a plea bargain), West was represented by competent counsel, but his attorney did not move to suppress the confession, nor, as far as we can tell from the record, did West tell his attorney or the prosecutor, through his attorney, that he had been beaten into confessing. Furthermore, after West was sentenced, he had numerous opportunities to allege that his confession was compelled by force, yet failed to make such an assertion. For example, in West's 1985 affidavit asserting that he lied when he testified against Gibson in order to avoid a death sentence, West did not claim he was beaten into confessing. In fact, it appears the first time that West claimed he was beaten was four days after this suit for damages was filed by Gibson in 1993. Moreover, when West implicated himself and plaintiff in 1968 in the robbery and murder, the police had physical evidence (fingerprint) of West's involvement, but knew nothing about plaintiff or about any co-perpetrator, except that a person named Roland had been seen with West nine hours before the murder, There was no apparent motivation for the police to coerce West into implicating plaintiff as the triggerman, while there was a good reason for West to identify an accomplice as the triggerman in order to avoid the death penalty. West did avoid the death penalty by implicating plaintiff, but remained silent for more than twenty years about any bating by the police as his motivation for inculpating himself and implicating plaintiff. Significantly, the trial judge who granted post-conviction relief to plaintiff in 1998 did not do so on the basis that West's statement was coerced (although this

evidence was presented to the trial judge), but granted relief because of a *Brady* violation.

On reconsideration, we conclude that the trial judge was manifestly erroneous in crediting West's 1993 recantation of his 1968 statement. Accordingly, the application for rehearing is denied.

APPENDIX B

98-1100 (La.App. 4 Cir. 2/24/99)

Roland GIBSON, Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson

V.

The STATE of Louisiana, John St. John and Lloyd West.

No. 98-CA-1100.

Court of Appeal of Louisiana, Fourth Circuit.

Feb. 24, 1999.

Rehearing Denied May 14, 1999.

Innocent person who had been wrongly convicted brought action against city and co-defendant in criminal case to recover for false arrest and imprisonment and malicious prosecution. The Civil District Court, Parish of Orleans, No. 93-2517, Carolyn Gill-Jefferson, J., entered judgment in favor of innocent person and family members. City and co-defendant appealed. The Court of Appeal, Klees, C.J., held that: (1) the co-defendant was not entitled to absolute immunity of non-litigant/nonparty witnesses; (2) evidence supported conclusion that police lacked probable

cause for arrest; (3) district attorney was responsible for wrongly prosecuting the innocent person; and (4) the appropriate allocation of fault was ten percent for codefendant and 45% each for city and district attorney.

Affirmed as amended.

Catrice A. Johnson, Maurice A. Williams, and Matthew B. Collins, Jr., Dianne J. Marshall, Collins & Marshall, New Orleans, Louisiana, Attorneys for Plaintiffs-Appellees.

Annabelle H. Walker, Deputy City Attorney, Franz L. Zibilich, Chief Deputy City Attorney, Avis Marie Russell, City Attorney, Attorneys for Defendants-Appellants The City of New Orleans and Lloyd West.

Terry E. Ellbritton, Tulane Law School, Appellate Advocacy Program, New Orleans, Louisiana, Attorney for Lloyd West.

Court composed of Chief Judge ROBERT J. KLEES, Judge WILLIAM H. BYRNES III, Judge CHARLES R. JONES.

KLEES, Chief Judge.

The plaintiff, Roland Gibson ("Gibson"), filed suit against the State of Louisiana, Lloyd West, the New Orleans District Attorney's Office, the City of New Orleans and a fic-

titious insurance company seeking damages for false arrest and imprisonment, malicious prosecution and personal injury. The claims against both the State and the District Attorney's Office were dismissed. After a bifurcated jury/judge trial, the court awarded eleven million dollars in damages in favor of plaintiffs Roland Gibson, Sr., Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson. The court held the City to be 90% at fault for the wrongful incarceration of Roland Gibson, with Lloyd West being 10% at fault. Defendants, the City of New Orleans and Lloyd West now appeal. We affirm as amended.

On December 30, 1967, a taxi cab driver was killed during an armed robbery in New Orleans, Louisiana. A fingerprint which was lifted from one of the windows of the cab was traced to Lloyd West ("West"). West admitted to being on the scene of the crime but implicated Gibson as being the triggerman. Thereafter, both West and Gibson were jointly indicted for the murder of the ta)d cab driver.

At the criminal trial, West, Gibson's codefendant, testified again that he had participated in the crime but claimed that Gibson was the one who shot and killed the cab driver. On November 25, 1968, Gibson was convicted by a jury of first degree murder and was sentenced to life imprisonment. On November 27, 1968, West entered into a plea bargain and was sentenced to life imprisonment.

Mr. Gibson:

Past and Future Pain and Suffering	$5,000,000.00
Past Loss Income	$1,038,215.00

Future Loss of Income	$ 636,409.00
Mrs. Jessie Gibson:	
Past and Future Pain and Suffering	$3,000,000.00
Roland Gibson, Jr.:	
Pain and Suffering	$1,000,000.00
Dennis Gibson:	
Pain and Suffering	$1,000,000.00

On June 3, 1985, West signed an affidavit in which he recanted his criminal trial testimony. West stated that he lied and falsely accused Gibson of shooting the cab driver because he was (1) afraid of the electric chair and (2). forced by the New Orleans police to implicate Gibson in the murder. Further, West admitted that George Carter, not Gibson, was the murderer.

In 1992, Gibson filed an application for post-conviction relief on the basis of West's affidavit. Gibson also claimed that the District Attorney had withheld a supplemental police report containing exculpatory evidence which should have been given to Gibson's defense attorney.

This supplemental report, as well as West's affidavit, was entered into evidence at two hearings held on October 23, 1992 and December 18, 1992. Thereafter, the trial judge granted Gibson's motion for post-conviction relief The state

entered a nolle prosequi as to Gibson's indictment on March 31, 1993.

On February 12, 1993, Gibson, his wife and two children, filed this instant civil suit. 'On February 2, 1998, a jury verdict was rendered against West and the court rendered judgment against the City. In its reasons for judgment, the court found that the police did not have probable cause to arrest Gibson for the armed robbery and murder of the cab driver and assessed 10% of fault to West and 90% of fault to the City. The court awarded damages accordingly:

Both West and the City appeal this final judgment.

Before discussing the City's arguments on appeal, we will address two preliminary matters: (1) West's exception of no cause of action and (2) plaintiffs' argument that the criminal transcripts are outside the record and cannot be considered by this court on appeal.

[1] First, West argues that he is entitled to absolute immunity from the judgment that was rendered against him because he was a non-litigant witness in Gibson's criminal trial. See *Spellman v. Desselles*, 596 So.2d 843, 845 (La.App. 4 Cir.1992), *writ denied* 605 So.2d 1080 (La. 1992). We find no merit to this argument. Although we agree with West that non-litigant/non-party witnesses enjoy absolute immunity, we do not find that West is a non-litigant witness. The record reflects that West was jointly indicted with Gibson for the armed robbery and murder of the taxi

cab driver and that he entered a guilty plea and received a life sentence. Accordingly, West's exception of no cause of action is denied.

Second, plaintiffs argue that the City cannot refer to the criminal trial transcripts because they are outside the record. However, the record indicates that on September 7, 1998, this court ordered the entire criminal record and the original police report to supplement the record on appeal. Therefore, we find that the exhibits in question are part of the record before us.

The City argues on appeal that the trial court erred in holding: (1) that the New Orleans police 'officers had no probable cause to arrest Roland Gibson, (2) that the City of New Orleans is liable not only for the plaintiffs' damages for false arrest, but for the damages suffered by the plaintiffs for Roland Gibson's conviction and twenty-five year wrongful incarceration, and (3) that the City of New Orleans was 90% at fault.

Appellate courts may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong". *Rosell v. ESCO*, 549 So.2d 840 (La.1989) *writ denied* 561 So.2d 105 (La. 1990). Where there is conflict in the testimony, reasonable evaluations Of credibility and reasonable inferences of fact should not be disturbed upon review. *Id.* Thus, if the trial court's decision is reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though the appellate court would have weighed the evidence differently. Further, the allocation of fault is a factual matter lying within the discretion of the trial court, and such determination will not be dis-

disturbed on appeal in the absence of manifest error or clearly wrong. *Maeder v. Williams*, 94-0754 (La.App. 4 Cir. IV30/94) 652 So.2d 1005 *writ denied* 94-3150 (La.3/10/95) 650 So.2d 1177.

The City's first complaint is that the trial court erred in concluding that the New Orleans police did not have probable cause to arrest Gibson for the armed robbery and murder of the taxi cab driver.

Jurisprudence holds that "probable cause to arrest exists when the facts and circumstances known to the officer and of which he has reasonably trustworthy information are sufficient to justify a man of ordinary caution in believing the person to be arrested has committed a crime." *State v. Wilson*, 467 So.2d 503 (La.1985) *cert. denied, Wilson v. Louisiana,* 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246 (U.S.La. Oct.15, 1985).

[21 In the sixteen pages of reasons for judgment, the trial court reviewed and evaluated the evidence that was available to the police in March of 1968. The trial court gave the following reasons for finding that the police did not have probable cause to arrest Gibson:

First, the court notes that initially the police were looking for a white male in connection with this crime. This individual was wanted for questioning. Apparently, he was never found. The court notes that the physical description of this individual does not match Mr. Gibson's physical description in any way. Second, there is no explanation in the police reports as to why or when the police made a huge

leap of concluding that the crime was committed by two individuals rather than one.

Specifically, the court notes that initially the police were looking for one individual, a white male. Thereafter, a fingerprint analysis identified one print, Mr. West's. Therefore, the physical evidence just connected only one individual to the crime, Mr. West. Third, there was no physical evidence to connect Mr. Gibson to the crime. Instead, the physical evidence connected Mr. West a convicted felon to the crime.

Mr. West's fingerprint was found inside of the cab and eventually, Mr. West admitted that he had the murder weapon. Fourth, the only evidence that the police had against Mr. Gibson came from Mr. West. Mr. West was a convicted felon who had changed his story on at least three occasions who was physically connected to the crime by a fingerprint and by his own admission was in possession of the murder weapon. Mr. Crayton's testimony was merely that he had seen Mr. West and Roland together hours before the crime was committed, Mr. Crayton saw them together at 12:00 Noon and the murder was committed at 9:00 p.m.

Mr. Gibson had no criminal convictions, yet, the police were still willing to take Mr. West's word that he was a murderer. Finally, there is no indication that the police even contacted Greyhound to see if the company kept records or logs to indicate when the sale of a ticket from Clarksville, Tennessee to New Orleans took place. They did not even check the bus schedule. Instead, they sat back and waited for Mr. Gibson's family to produce a sub which by

that time was three months old. Not surprisingly, the sub could not be located.

Considering all of the evidence that was available to the police in March 1968, the court concludes that they did not have probable cause to arrest Mr. Gibson for the armed robbery and murder of Charles Reinecke.

The City argues that the trial court's reasons for judgment incorrectly describes the information available to the police as of the date Gibson was arrested and charged. We find merit with,only one of the City's error's alleged on appeal.

We agree with the City that in the trial court's reasons for judgment, the trial court misrepresented the information the police gathered from Thomas Crayton. Specifically, the trial court stated that "Mr. Crayton stated initially that r. West was not with him at all on the date in question, December 30, 1967, instead, Mr. Crayton stated that around noon on December 30, 1967, he saw Mr. West with a man named Roland who was AWOL from the Army." However, the Supplement Report states, in pertinent part:

> Crayton also stated that West was positively not with him on 12-30-67. Crayton stated that Lloyd West and a Mend of his known only as "Roland", who was alleged to have been AWOL from the Army at the time. Crayton stated that he left his apartment shortly before noon on 12-30-67, leaving West and Roland in the apartment. When he returned later in the afternoon, both subjects were gone and he did not see West again until New Years Day.

Nonetheless, after reviewing all of the evidence, we do not find this misrepresentation of the facts establishes that the trial court was clearly wrong in concluding that the police did not have probable cause to arrest Gibson. We reiterate that the trial judge is afforded great deference in making factual conclusions. *Rosell,* 549 So.2d 840.

[31 The City's second complaint is that the trial judge erroneously held the City responsible, through its police, for the later events which resulted in Gibson's wrongful conviction and incarceration. The City alleges that it was the District Attorney who made the decision to prosecute Gibson and who failed to turn over the Supplemental Report prepared by police to the defense counsel. We find merit to this argument.

Article V, § 26(B) of the Louisiana Constitution provides that the district attorney controls the administration of criminal prosecutions. Further, LSA-C.Cr.P. art. 61 states that "the district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute." We have been unable to locate Louisiana jurisprudence to support the City's position that the actions of a prosecuting attorney breaks the chain of causation for later results of an alleged false arrest against a police officer. However, we have reviewed and are persuaded by the case, Barts v. Joyner, cited by the City, to support their position that the District Attorney is liable for Gibson's wrongful conviction and incarceration. 865 F.2d 1187 *cert. denied*, 493 U.S. 831, 110 S.Ct. 101, 107 L.Ed.2d 65 (U.S.Fla. Oct.2, 1989).

In *Barts*, the plaintiff reported that her "father" had been shot by an unknown intruder. Plaintiff later admitted that she had shot the victim when he started kissing her. The police then arrested plaintiff for the murder. Plaintiff was tried and convicted of second degree murder. Plaintiff served eight months of a twenty-five year sentence before her release on appellate bond. She finally was able to tell her attorneys that she shot the victim because he had raped her and she thought he was attempting to do so again. Plaintiff was granted a new trial, where she was acquitted, because of her inability to communicate the rape due to Rape Trauma Syndrome. Plaintiff brought an action against the officers in their capacities as deputy sheriffs and alleged that her detention and transportation to the sheriffs station was an unlawful seizure within the meaning of the fourth amendment. Plaintiff alleged that she was entitled to damages for her criminal trials, conviction, incarceration and resulting aggravation of her Rape Trauma Syndrome. A jury awarded $175,000 against each police officer.

On appeal, the Eleventh Circuit vacated the judgment against defendants in their official capacity and remanded for a new trial. The court held that the intervening acts of the prosecutor, grand jury, judge and jury each break the chain of causation unless it can be shown that these intervening acts were the result of deception or undue pressure by the policemen. Barts, 865 F.2d at 1195. The court stated that the plaintiff failed to produce any evidence that the intervening acts of the prosecutor, grand jury, judge or jury were caused by any deception or undue pressure by the deputy sheriffs. *Id.* at 1196. Further, the court explained that the plaintiff failed to produce evidence "in which a recovery

has been allowed against the arresting police officers for everything, including time served in prison following a conviction, that followed the improper seizure or arrest." *Id* at 1197. The court continued to explain that it would "not create that precedent in the absence of a showing that the police officers deceived the court officials or unduly pressured them or that the court officials themselves acted with malice and the police joined them." Id.

In this instant case, Gibson has failed to present evidence that the police officers unduly pressured the District Attorney to act with malice. We adopt the sound reasoning set forth in the *Barts* case and find that once the police turned over the investigation to the District Attorney, the responsibility of the police had ended. Accordingly, we hold the District Attorney liable for (1) prosecuting Gibson and (2) failing to turn over the exculpatory information to the defense counsel.

[4] The City's third complaint is that the trial court erred in its allocation of ninety percent of the fault for Gibson's alleged false arrest to the City of New Orleans, The City, alleges that even if Gibson was falsely arrested, and even if the police officers were partially at fault, the trial court erred in ascribing 90% of that fault to the police. We find this argument.

In assigning fault, the trial court looked only at the actions of each defendant. In its reasons for judgment, the trial court stated that:

As to Lloyd West, his version of the facts differs significantly from the facts set forth in the Supplemental Police Report and Mr. West testified that prior to the crime he had known Mr. Gibson. They had grown up in the same neighborhood and had "hung" out together.

Mr. West also testified that he was beaten and tortured into confessing that he was involved in the armed robbery.... He gave graphic testimony of being kicked in the chest and groin, choked with a rope around his neck, punched, had a pistol stuck in his mouth and was poked with a cattle prod.

Additionally, he testified that in fact the police brought up Mr. Gibson's name and suggested to Mr. West that Mr. Gibson had committed the crime. Mr. West testified that to save his own life, i.e., to stop the beatings and torture and to avoid the electric chair he implicated Mr. Gibson and agreed to testify against him.

The court found Mr. West to be a very credible witness. He described the beatings and torture in great detail and it was apparent that while testifying that he was actually reliving this experience. Furthermore, the Supplemental police Report indicates that when police were told by Mr. Crayton that he saw Mr. West with an individual "named Roland" who was AWOL, they then learned that Roland Gibson had been reported AWOL, on the day of the murder. Therefore, when Mr. West was questioned, the police knew of Roland Gibson.

> Several years after implicating Mr. Gibson and testifying against him in criminal trial, Mr. West admitted that Mr. Gibson was not involved in the crime. Mr. West now maintains that he and an individual named George Carter committed the crime.The court notes that the physical description that Mr. West gave during the trial of this case of Mr. Carter matches the description of the suspect that the police were initially seeking for questioning as a white male, six feet, one inch tall.
>
> As previously noted, it took Mr. West several years to admit the truth. By then, Mr. Gibson had gone through the ordeal of a trial, been convicted of first degree murder and sentenced to life imprisonment and incarcerated for twenty four years. As to the city's culpability, the court has already found that there was no probable cause to arrest Mr. Gibson.
>
> Considering the law and evidence, the court assesses fault as follows: Lloyd West 10%, the City of New Orleans 90%.

We reiterate that the allocation of fault is a factual finding which a reviewing court does not disturb unless, upon articulated and detailed analysis and reasons, that finding is demonstrated to be clearly wrong. Maeder, 650 So.2d 1177.

However, as stated above, we find the trial court erred in holding the police, rather then the District Attorney, primarily liable for Gibson's wrongful conviction and incar-

ceration. The evidence in the record regarding the District Attorney's actions in the prosecution of this case mandates a finding of fault on the part of the District Attorney. Thus, this court must allocate a percentage of fault to the District Attorney.

Although the Louisiana Supreme Court has recently held in Knapper v. Connick that a prosecutor is entitled to absolute immunity from suit for malicious prosecution, the law still requires a percentage of fault to be allocated to all persons who contribute to the loss. 96--03434 (La.10/15/96) 681 So.2d 944. As provided in La. Civ.Code art. 2323, amended by Act 3 of the 1996 Extraordinary Legislative Session, effective on April 16, 1996:

> A. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss. (Emphasis Added)

After reviewing the evidence and law we amend the trial

court's assessment of fault as follows: Lloyd West 10%, the City 45% and the District Attorney 45%.

This court will not address the issue of damages for the City has failed to raise this issue on appeal.

For the foregoing reasons, we affirm as amended.

AFFIRMED AS AMENDED.

APPENDIX C

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

ROLAND GIBSON, ET AL,	*	CIVIL ACTION
PLAINTIFFS	*	
	*	
VERSUS	*	CASE NUMBER
	*	93-2517
LLOYD WEST, ET AL,	*	
DEFENDANTS	*	DIVISION "A"
	*	
	*	SECTION 08

* *

FILED:_____, 1998 _____
DEPUTY CLERK

JUDGMENT OF THE COURT

This cause came on for trial in a bifurcated jury/judge trial on January 29, January 30 and February 2, 1998. The Court considering the law and evidence to be in favor of plaintiffs for the reasons contained in the reason for judgment dictated into the record on February 9, 1998.

IT IS ORDERED, ADJUDGED and DECREED that there be Judgment herein in favor of the plaintiffs, Roland Gibson, Sr., Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson and against the defendants, Lloyd West, The City of New Orleans in solido and as follows:

The comparative fault of the defendants, Lloyd West shall be

ten (10%) percent and The City of New Orleans, shall be ninety (90%) percent.

The award shall be as follows:

A) Roland Gibson, Sr.....$6,674,624.00
B) Jessie Gibson $3,000,000.00
C) Roland Gibson, Jr.....$1,000,000.00
D) Dennis Gibson.....$1,000,000.00

IT IS FURTHER ORDERED, ADJUDGED and DECREED that plaintiffs be awarded legal interest from the date of judicial demand until paid and for all costs of these proceedings.

Judgment Read, Rendered and Signed in Open Court this 18th day of February, 1998.

/s/ Carolyn W. Gill-Jefferson
JUDGE

RESPECTFULLY SUBMITTED,

By: Catrice Johnson

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Please serve Judgment and Notice of Signing of Judgment as follows:

A) The City of New Orleans, Defendant
through its attorney of record
Anabelle Walker, Esq.
Assistant City Attorney
City Hall
1300 Perdido Street - Room 5EO1
New Orleans, Louisiana 70112

B) The City of New Orleans, Defendant
through its attorney of record
Franz L. Zibilich, Esq.
Assistant City Attorney
City Hall
1300 Perdido Street - Room 5EO1
New Orleans, Louisiana 70112

C) Lloyd West, Defendant
through
Lloyd West, Pro Se
Inmate Number 84015
Louisiana Department of Corrections
Police Barracks
265 South Foster Drive
Baton Rouge, Louisiana 70802

D) Roland Gibson, Sr., et al., Plaintiffs
through their attorney of record
Catrice A. Johnson, Esq.
636 North Broad Street
New Orleans, Louisiana 70119

E) Roland Gibson, Sr., et al, Plaintiffs
through their attorney of record
Matthew B. Collins, Jr., Esq.
Dianne J. Marshall, Esq.
Collins & Marshall
234 Loyola Avenue - Suite 310
New Orleans, Louisiana 70112

APPENDIX D

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

ROLAND GIBSON, JESSIE GIBSON, ROLAND GIBSON, JR. and DENNIS GIBSON — CASE NO. 93-2517

DIVISION "A"

vs.

THE STATE OF LOUISIANA, THE CITY OF NEW ORLEANS AND LLOYD WEST

Transcript of Judgment and Reasons for Judgment dictated into the record in open court on February 9, 1998, the HONORABLE CAROLYN W. GILL-JEFFERSON, JUDGE presiding.

ANGELA MARIE COLEMAN
OFFICIAL COURT REPORTER

A-P-P-E-A-R-A-N-C-E-S

Catrice Johnson, representing Roland Gibson
Wade Kee, representing City of New Orleans

JUDGMENT AND REASONS FOR JUDGMENT
BY THE COURT:

This is case number 93-2517, Roland Gibson, Jessie Gibson, Roland Gibson, Jr. and Dennis Gibson versus the State of Louisiana, Lloyd West and the City of New Orleans.

This matter came to trial on January 29, 30 and on February 2, 1998. The relevant facts are as follows:

The plaintiff, Roland Gibson has sued the City of New Orleans, Lloyd West, the District Attorney, and an unnamed District Attorney and the State of Louisiana for damages caused by his wrongful conviction and incarceration in 1968 for the murder of a cab driver known as Charles Reinecke. Mr. Reinecke was murdered on December 30, 1967 during an armed robbery.

Mr. Gibson's co-defendant, Lloyd West testified that he and Mr. Gibson committed the robbery. However, Mr. West testified that it was Roland Gibson who shot Mr. Reinecke. Under a plea bargain, Lloyd West was sentenced to a life term at Angola Penitentiary. Roland Gibson was convicted by a jury, of first degree murder and was sentenced to a life term as well.

Some twenty-five years later, Roland Gibson filed a motion for post-conviction relief, accompanied by an affidavit from Lloyd West, in which Mr. West recanted his earlier testimony and said that Mr. Gibson was not involved in the murder.

Roland Gibson also claimed that a supplemental police report contained exculpatory information which was

not provided to him in the previous criminal proceeding. This report as well as Lloyd West's testimony was entered into evidence at two hearings held on October 23, 1992 and December 18, 1992, respectfully in Division 'E' of the Criminal District Court for the Parish of Orleans. Judge Calvin Johnson granted Roland Gibson's motion for post-conviction relief .

Roland Gibson then filed the instant suit in this court. The State of Louisiana was dismissed on exception on December 17, 1993. As to Lloyd West, the case was tried to a jury and as to the City, the court was the trier of fact.

On the evening of February 2, 1998, the jury rendered its verdict against Mr. West. As to the City, the court took the matter under advisement and ordered counsel to return to court today so that the court could dictate its judgment and reasons for judgment in open court.

The first issue before the court is whether the City through the Police Department had probable cause to arrest Mr. Gibson. Pursuant to the jurisprudence, probable cause means that the City, through the Police Department had reasonable and trustworthy information sufficient to believe that Mr. Gibson murdered cab driver, Charles Reinecke on December 30, 1967 during an armed robbery. See Keller v. Schwegmann Giant Supermarket, 604 So2d 1058, 1060 (4th Cir. 1992)

In determining whether there was probable cause to arrest Mr. Gibson, the court must determine what evidence was available to the police at the time of Mr. Gibson's arrest in March 1968.

The evidence available to the police can be adduced from the two police reports. The initial police report states that in connection with the armed robbery and murder of Charles Reinecke, the police wanted to question a white male who was described as having sandy blonde hair, being six feet tall, weighing 165 pounds and being between the ages of twenty five and thirty. The report also contained a description of his clothing.

The supplemental police report states, number one, on January 29, 1968, the police were able to match a partial fingerprint found in the left rear window of Charles Reinecke's cab to defendant, Lloyd West. Mr. West's fingerprints were on file because he had a prior criminal conviction for burglary, assault and battery. When arrested previously Mr. West had a .22 caliber weapon in his possession. This was the same caliber of weapon that killed the cab driver, Charles Reinecke.

On January 29, 1968, Mr. West was brought in for questioning. He denied having any information of the murder and despite the fact that his fingerprint was found inside the cab, he denied that he was even in the cab. He further claimed that at the time of the murder, he had an alibi. He told police that he was with Thomas Crayton, Dorothy Thornton and her husband who he identified as "James".

Number four, the police then questioned Dorothy Thornton and her husband whose name was not James but was Dudley. The Thorntons told police that they only knew Mr. West through Thomas Crayton. They further stated on the date in question, Mr Thornton was not even in New Orleans. Fifth, the police then attempted to locate Mr. West's other alibi witness, Thomas Crayton but because he

had moved, they were not able to locate him.

Number six, due to a manpower shortage and a heavy workload, the investigation was put on hold for two months. Number seven, thereafter, on March 27, 1968, the investigation resumed. The detectives then zeroed in on Mr. West, presumably because one of his fingerprints had been found inside of the cab.

The officers again questioned Mr. West's alibi witness, Dudley and Dorothy Thornton. This time Mr. and Mrs. Thornton gave different statements. Mr. Thornton now stated that he was not out of town on the day of the murder as he had previously claimed. Instead, he stated that on the date in question he was home all night with his wife and Thomas Crayton and he was not with Mr. West. Mr. Thornton told police he did not see Mr. West until the day after the murder, December 31, 1967, when Mr. West and Mr. Crayton came to his apartment to borrow a television. Mrs. Thornton affirmed her husband's statement.

The detectives then located Mr. Crayton and brought him in for questioning. Mr. Crayton stated initially that Mr. West was not with him at all on the date in question, December 30, 1967, instead, Mr. Crayton stated that around Noon on December 30, 1967, he saw Mr. West with a man named Roland who was AWOL from the Army.

The Police investigated and learned that Roland may have been Roland Gibson. Mr. Gibson was in the Army stationed in Fort Campbell, Kentucky. New Orleans was his hometown and he had been reported AWOL on December

30, 1967. On March 29, 1968, the police arrested Mr. West for the murder of Charles Reinecke. Mr. West was given copies of the statements made by the Thorntons and Mr. Crayton. Mr. West then changed his story and said that on the night of the murder, he was at home with his mother.

Mrs. West was then brought into the Detective Bureau and she stated that she could not provide her son, Lloyd with an alibi. Mr. West underwent a polygraph test and the results indicated that he was not telling the truth. The supplemental police report then states that when confronted with the results of the polygraph test Mr. West again changed his story. This time, he admitted that he was involved in the robbery but said that Mr. Roland Gibson had shot the cab driver. Mr. West also told the police that the murder weapon was at Mr. Gibson's home.

The Supplemental Police Report then states that Mr. West repeated his confession on videotape. However, the court notes that at the trial, neither defendant made mention of the existence or the whereabouts of the alleged videotape. In the early morning hours of March 30, 1968, the police obtained a search warrant for Roland Gibson's home and went to the residence to search for the gun and to arrest Mr. Gibson. When Mr. Gibson arrived home, he was intoxicated and he was arrested. However, a search of his residence did not produce a gun.

At the station, Mr. Gibson was belligerent and he was locked up. The police then informed Mr. West that Mr. Gibson denied being involved in the murder and that they had not found the weapon in Mr. Gibson's residence. When

presented with this information, Mr. West again changed his story. He told police that the murder weapon was actually at his residence and he described it in great detail. Purportedly, he then repeated this confession on videotape. Again, no mention of this tape was made at trial.

A search warrant was obtained for Mr. West's residence. At the residence, Mr. West's younger brother, Jerome told police that he had found the gun between his brother Lloyd's mattress and box springs. Jerome stated that after playing with the gun he had left it in the yard. And it was Jerome's description of the gun and Jerome's description of the gun closely matched Lloyd West's description.

Detectives then questioned Mr. Gibson. Mr. Gibson denied any knowledge or involvement in the murder. He said that in December 1967 he was in the Army stationed at Fort Campbell, Kentucky. He stated that he was relieved from duty on December 30, 1967, the date of the murder, at 12:00 Noon. However, military records reported Mr. Gibson AWOL as of 7:00 AM on December 30, 1967.

Mr. Gibson also claimed that two of his fellow soldiers could back up his claim that he did not arrive in New Orleans until 3:00 AM on December 31, 1967. Mr. Gibson claimed that he had been on duty at Fort Campbell with another soldier until December 30, 1967.

Thereafter, Mr. Gibson stated that he was with a second soldier named William Walters until 8:00 PM on December 30, 1967 when he and Walters parted company in Clarksville, Tennessee. Mr. Gibson told police that at

10:00 PM on December 30, 1967, he caught a Greyhound bus in Clarksville and arrived in New Orleans at 3:00 AM on December 31, 1967 which is after Mr. Reinecke's murder.

The police report notes that Mr. Gibson's statement was contrary to statements made by Mr. Crayton and Mr. West in that Mr. Crayton and Mr. West both said. that Mr. Gibson had been with Mr.West on the night of December 29, 1967. However, the court notes that this is incorrect. In fact, Mr. Crayton stated that he saw Mr. West and "Roland" together at 12:00 Noon on December 30, 1967. He did not say that he saw them together on December 29, 1967.

Additionally, Mr. Gibson produced a pay voucher dated December 29, 1967 for the pay period December 1 through 31, 1967. He stated that he received this voucher on December 30, 1967.

Mr. Gibson also stated that he had a stub from his bus ticket at his house and that this would prove that he did not leave Tennessee until December 30, 1967. Based upon this information, the police report states that a call was made to Fort Campbell. As a result of this call the police learned that, number one, both soldiers mentioned by Mr. Gibson had been re-assigned and were then serving in Vietnam.

Army personnel stated that they would attempt to locate these soldiers. Number two, although Mr. Gibson was not reported as AWOL until December 30, 1967 at 7:00 AM he could have actually been AWOL since sometime on December 29, 1967, and three, Mr. Gibson had been paid on December 29, 1967 and not on December 30, 1967.

Finally, the police report notes that Mr. Gibson's family could not locate the bus ticket stub which by that time would have been three months old. Based upon all of the above, the police concluded that they had probable cause to arrest Mr. Gibson for armed robbery and murder.

The court considering all of the evidence presented, specifically the two police reports holds that for the following reasons, the City of New Orleans through the Police Department did not have probable cause to arrest Mr. Gibson because they did not have reasonable and trustworthy information sufficient to believe that Mr. Gibson had committed the crime.

First, the court notes that initially the police were looking for a white male in connection with this crime. This individual was wanted for questioning. Apparently, he was never found. The Court notes that the physical description of this individual does not match Mr. Gibson's physical description in any way. Second, there is no explanation in the police reports as to why or when the police made a huge leap of concluding that the crime was committed by two individuals rather than one.

Specifically, the court notes that initially the police were looking for one individual, a white male. Thereafter, a fingerprint analysis identified one print, Mr. West's. Therefore, the physical evidence just connected only one individual to the crime, Mr. West. Third, there was no physical evidence to connect Mr. Gibson to the crime. Instead, the physical evidence connected Mr. West, a convicted felon to the crime.

Mr. West's fingerprint was found inside of the cab and eventually, Mr. West admitted that he had the murder weapon. Fourth, the only evidence that the police had against Mr. Gibson came from Mr. West. Mr. West was a convicted felon who had changed his story on at least three occasions who was physically connected. to the crime scene by a fingerprint and by his own admission was in possession of the murder weapon. Mr. Crayton's testimony was merely that he had seen Mr. West and Roland together hours before the crime was committed. Mr. Crayton saw them together at 12:00 Noon and the murder was committed at 9:00 PM.

Mr. Gibson had no criminal convictions, yet, the police were still willing to take Mr. West's word that he was a murderer. Finally, there is no indication that the police even contacted Greyhound to see if the company kept records or logs to indicate when the sale of a ticket from Clarksville, Tennessee to New Orleans took place. They did not even check the bus schedule. Instead, they sat back and waited for Mr. Gibson's family to produce a sub which by time was three months old. Not surprisingly, the sub could not be located.

Considering all of the evidence that was available to the police in March 1968, the court concludes that they did not have probable cause to arrest Mr. Gibson for the armed robbery and murder of Charles Reinecke. The second issue for the court to address is the apportionment of liability. Pursuant to Civil Code Article 2323, the court must assign a percentage of fault to each defendant.

In assigning fault, the court must look at the actions of each defendant. As to Lloyd West, his version of the facts

differs significantly from the facts as set forth in the Supplemental Police Report and Mr. West testified that prior to the crime he had known Mr. Gibson. They had grown up in the same neighborhood and had "hung" out together.

Mr. West also testified that he was beaten and tortured into confessing that he was involved in the armed robbery of Charles Reinecke. He gave graphic testimony of being kicked in the chest and groin, chocked with a rope around his neck, punched, had a pistol stuck in his mouth and was poked with a cattle prod.

Additionally, he testified that in fact the police brought up Mr. Gibson's name and suggested to Mr. West that Mr. Gibson had committed the crime. Mr. West testified that to save his own life, i.e., to stop the beatings and torture and to avoid the electric chair he implicated Mr. Gibson and agreed to testify against him.

The court found Mr. West to be a very credible witness. He described the beatings and torture in great detail and it was apparent that while testifying that he was actually reliving this experience. Furthermore, the Supplemental Police Report indicates that when police were told by Mr. Crayton that he saw Mr. West with an individual "named Roland" who was AWOL, they then learned that Roland Gibson had been reported AWOL on the day of the murder. Therefore, when Mr. West was questioned, the police knew of Roland Gibson.

Several years after implicating Mr. Gibson and testifying against him in criminal trial, Mr. West admitted that

Mr. Gibson was not involved in the crime. Mr. West now maintains that he and an individual named George Carter committed the crime. The court notes that the physical description that Mr. West gave during the trial of this case of Mr. Carter matches the description of the suspect that the police were initially seeking for questioning as a white male, six feet, one inch tall.

As previously noted, it took Mr. West several years to admit the truth. By then, Mr. Gibson had gone through the ordeal of a trial, been convicted of first degree murder and sentenced to life imprisonment and incarcerated for twenty-four years. As to the City's culpability, the court has already found that there was no probable cause to arrest Mr. Gibson.

Considering the law and evidence, the court assesses fault as follows: Lloyd West 10%, the City of New Orleans 90%. The final issue for the court to address is damages. As to Roland Gibson: Mr. Gibson was arrested on March 29, 1968. He was nineteen years old at the time. Pending trial, he was locked up in Parish Prison. In November 1968, he was convicted of first degree murder and sentenced to life imprisonment.

In December 1968, he was transferred to Angola. Mr. Gibson spent many years at Angola and he testified as to what life was like at Angola. Since he was young, he was preyed upon by the older prisoners who sought to sexually abuse him. He was scared and had to fight the other prisoners to protect himself. While at Angola he worked in the fields for three years.

Mr. Gibson was later transferred to Jackson Barracks and in 1975, he got a pass and did not return. He was on the lam for a year. He was re-arrested in 1976 and sent back to Angola. He remained at Angola until April of 1993 when he was released. At the time of his release, Mr Gibson was forty-four years old. He had been incarcerated for twenty-four years, well over one half of his life.

As to how this ordeal affected Mr. Gibson's relationship with his family, Mr. Gibson married Jessie Gibson in 1966. They have two sons, Roland, Jr. born December 1966, and Dennis born November 1967. After Mr. Gibson was arrested, Mrs. Gibson would visit him weekly in Parish Prison. She did not bring the two children because they were too small and she felt that that was not a place for them to be. When Mr. Gibson was transferred to Angola, she and the children would visit once or twice a month.

At one point, Mr. Gibson told Mrs. Gibson he did not want her to visit and they were divorced. Thereafter, the children's grandmother brought them to see their father. In November 1988, Mrs. Gibson resumed her visits. In 1993, Mr. Gibson and Mrs. Jessie Gibson were re-married. They were together on and off for two and a half years. They are now in a trial separation.

Mr. Gibson testified that there are difficulties in the marriage due to his depression, his drinking and his inability to hold a long term job. Mr. Gibson attributes these problems to his incarceration although the court notes that the testimony indicates that he did drink prior to his incarceration.

Dr. Yvonne Osborne, a Clinical Psychologist testified that Mr. Gibson suffers from post-traumatic stress adjustment disorder and alcohol abuse. She testified that Mr. Gibson was having problems adjusting to life outside of prison. This manifests itself as depression, panic attacks, anxiety, anger and frustration. He has flash backs to his time in prison and due to these intrusive memories he has trouble concentrating.

This coupled with the fact that he has only an eighth grade education and no job skills means he has problems keeping a job. Furthermore, Dr. Osborne testified that Mr. Gibson doesn't have the foundation to build upon for re-training.

Robert Johnson, a forensic economist also testified as to Mr. Gibson's past and future loss of income. He noted that prior to his incarceration, Mr. Gibson had received a general discharge from the Army and had worked part-time as a long shoreman. Since his release from prison, Mr. Gibson has only been able to hold odd jobs on a temporary basis. Mr. Johnson concludes that Mr. Gibson's past loss income was $1,038,215 and that his future loss of income was $636,409.00.

Considering the evidence and the testimony, the court awards Mr. Gibson damages as follows: Past and future pain and suffering $5,000,000.00; past loss income $1,038,215.00; future loss of income $636,409.00.

As to Mrs. Jessie Gibson, when Mr. Gibson was incarcerated Mrs. Gibson was left without a husband and with the responsibility of raising two boys on her own. She was forced to be mother and father to their children. Mrs.

Gibson was fortunate to have help from her mother, but to support herself and two children she worked sixteen hour days.

She testified that she still loves Mr. Gibson but that he was too hard to live with. Considering the law and evidence the court awards Jessie Gibson the sum of $3,000,000.00 for her past and future pain and suffering.

As to Roland Gibson, Jr. and Dennis Gibson, Roland Gibson, Jr. was fifteen months old when his father was arrested and incarcerated and Dennis Gibson was only six months old. Their earliest memories of their dad were when he was incarcerated. They recall visiting with their dad once or twice a month and phone calls once or twice a month.

Roland Gibson testified that he had a lot of family responsibility such as cooking and cleaning while their mom worked. They missed sharing birthdays, graduations, and holidays with their dad. Roland, Jr. testified that he grew up with anger. He was angry because the public perceived his father as a convicted killer.

Considering the testimony and the evidence the court awards Roland Gibson, Jr. the sum of $1,000,000.00 for his pain and suffering. Dennis Gibson the court awards the sum of $1,000,000.00 as well. In addition, the plaintiffs are aware court costs and interest from the date of judicial demand.

* * * * *

CERTIFICATE

I, ANGELA M. COLEMAN, do hereby certify that the foregoing pages, contain a true and correct transcript, to the best of my understanding in the matter of Roland Gibson, Et Al vs. The City of New Orleans and Lloyd West, case number 93-2517, Division "A", Civil District Court, Parish of Orleans, State of Louisiana.

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That I am not of counsel, not related to counsel or the parties hereto, and not in anywise interested in the event of this suit.

Angela Marie Coleman
ANGELA MARIE COLEMAN
OFFICIAL COURT REPORTER

(3)

Supreme Court, U.S.
FILED

No. 00 873 SEP 14 2000

OFFICE OF THE CLERK

In the
Supreme Court of the United States

ROLAND GIBSON, SR., JESSE GIBSON,
ROLAND GIBSON, JR. and DENNIS GIBSON
PETITIONERS

vs.

THE CITY OF NEW ORLEANS and LLOYD WEST
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA STATE SUPREME COURT

APPENDIX VOLUME II
Appendix E - Appendix I

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(504) 822-0360

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Attorneys for Petitioners,
Roland Gibson, Sr., Jesse Gibson,
Roland Gibson, Jr. and Dennis Gibson

Riverside Printing, L.L.C., 4939 Tchoupitoulas, N. O., LA 70115, (504) 897-5000

APPENDIX E

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

ROLAND GIBSON, ET AL,	*	CIVIL ACTION
PLAINTIFFS	*	
	*	
VERSUS	*	CASE NUMBER
	*	93-2517
LLOYD WEST, ET AL,	*	
DEFENDANTS	*	DIVISION "A"
	*	
	*	SECTION 08

* *

FILED:_____, 1998 _____
DEPUTY CLERK

JUDGMENT OF THE JURY

This cause having been duly tried before and submitted to the Jury and the Jury having returned a verdict in words and figures as follows:

COMPARATIVE FAULT OF THE PARTIES

A) Lloyd West 25%
B) The City of New Orleans.....75%

DAMAGES

A) Roland Gibson, Sr.....$16,000,000.00
B) Jessie Gibson .....$ 9,000,000.00

C) Roland Gibson, Jr.....$2,500,000.00
D) Dennis Gibson.....$2,500,000.00

IT IS ORDERED, ADJUDGED and DECREED that the Jury verdict be recorded.

New Orleans, Louisiana this 27th day of February, 1998.

/s/ Carolyn W. Gill-Jefferson
JUDGE

Please serve Judgment and Notice of Signing of Judgment as follows:

A) The City of New Orleans, Defendant
through its attorney of record
Anabelle Walker, Esq.
Assistant City Attorney
City Hall
1300 Perdido Street - Room 5EO1
New Orleans, Louisiana 70112

B) The City of New Orleans, Defendant
through its attorney of record
Franz L. Zibilich, Esq.
Assistant City Attorney
City Hall
1300 Perdido Street - Room 5EO I
New Orleans, Louisiana 70112

C) Lloyd West, Defendant
through
Lloyd West, Pro Se
Inmate Number 84015
Louisiana Department of Corrections
Police Barracks
265 South Foster Drive
Baton Rouge, Louisiana 70802

D) Roland Gibson, Sr., et al., Plaintiffs
through their attorney of record
Catrice A. Johnson, Esq.
636 North Broad Street
New Orleans, Louisiana 70119

E) Roland Gibson, Sr., et al, Plaintiffs
through their attorney of record
Matthew B. Collins, Jr., Esq.
Dianne J. Marshall, Esq.
Collins & Marshall
234 Loyola Avenue - Suite 310
New Orleans, Louisiana 70112

APPENDIX F

Members of the jury, we now come to that part of the case where I must give you the instructions on the law. If you can't hear me, please raise your hand. It is important that you hear everything that I am going to say with regards to the instructions on the law.

Some of my instructions will be similar to what I told you at the beginning of the trial. It is my duty to tell your the law that applies in this case and it is your duty to follow the law as I state it to you.

During the course of the trial, you have heard objections to evidence. It is the duty of the lawyers on each side of the case to object when the other side offers testimony or other evidence which the lawyer believes is not properly admissible. You should not draw any inference against or show any bias against any lawyer, or the lawyer's client because the lawyer's making of an objection.

During the trial, if I have said or done anything that has suggested to you that I favor the claims or the position of any party, over the other party, you should disregard it. If I have indicated in any way that I have any opinion as to what the facts are in this case or should be, you should. disregard that. I am not the judge of the facts. You are sole judges of the facts.

As I stated earlier, it is your duty to follow the law as I state it to you. You should not be concerned with the wisdom of any rule of law that I might tell you about. You should consider what I say about the law as a whole. You should not single out any one sentence, or individual point

or idea and ignore the others. The order in which the statements about the law are made has no, significance as to their relative importance.

As jurors, there are certain guidelines which you should follow in resolving the issues of fact, in determining the credibility of the witnesses, the weight of their testimony, and thereby arriving at what the facts are in this case.

First, you are to consider only the evidence which has been offered during the trial and such inferences as you can logically and reasonably draw from the evidence.

Second, you must not be influenced by sympathy, passion or prejudice in favor of any party or against any of the parties.

Third, if the testimony on any point is not contradicted, you should treat is as proving that fact unless the testimony seems to you to be impossible or very improbable, or unless the witness has shown by his or her testimony or it is shown by other evidence in the case to be unworthy of belief.

When testimony conflicts, you will get at the truth by weighing the testimony of one witness against that of the others, by considering the witness's interest or lack of interest in the outcome of the case, the partiality or fairness of the witness, the witness's relative opportunity of knowing the facts about which he or she has testified, the witness's conduct or behavior on the witness stand, the manner in which he or she has given testimony, and the other evidence in the

case.

You need not accept all of the testimony of a witness as being true or false; you may accept and believe those parts of a witness's testimony you consider logical and reasonable and reject those parts of the testimony that seem impossible or improbable.

Fourth, if the testimony of a witness is inconsistent with a prior statement, it is your duty to determine if the testimony of the witness should be discredited. I you decide that the testimony of the witness has been discredited, then you are to decide what weight , if any, to give to that testimony.

If you should find that a witness has testified falsely as to a material fact, then you have the right to reject the entire testimony of the witness or reject only part of the testimony, based upon how you are impressed with the truthfulness of the witness;

Fifth, you should consider the quality and not necessarily the quantity or number of witnesses who testify. That is, you should weigh the testimony of the witnesses rather than merely count which side has produced the most witnesses and find in favor of the side with the most witnesses;

Finally, throughout your deliberations you should keep in mind that all persons are equal before the law. All persons, whether individuals or corporations stand equal in the eyes of the law.

Using these tests you should determine the credibility or believability of the witnesses and the weight of their testimony and thereby arrive at the facts of this case.

However, the mere fact that an incident has happened standing alone does not permit you to assume that the incident was caused by anyone's fault or that the plaintiff should recover damages just because there was an incident.

The burden of proof, this being a civil case, a plaintiff has the burden of proving his or her case by a preponderance of the evidence instead of beyond a reasonable doubt as in a criminal case.

What is meant by a preponderance of evidence? This phrase means that after a consideration of all of the evidence, that you, as jurors, find that the existence of a fact is more probable than its nonexistence; rephrased, it means that you believe a fact is more true than not true.

However, you should keep in mind that speculation, guessing and a mere possibility is not sufficient to establish the existence of any fact.

The argument of counsel, also, you have heard what the lawyers have had to say about the evidence in their arguments. You must distinguish between that which counsel may have said by way of argument and the evidence upon which those arguments are based.

Just because a lawyer has said something is a fact does not mean it is so, no matter how many times it may

have been repeated by the lawyer in argument.

The arguments of counsel are nothing more than their suggestions to you as to what they think the evidence is and what it has proven. You may accept or disregard these suggestions as you see fit. What the evidence is and what it has proven is for you and you alone to determine.

Furthermore, when the lawyers stipulate to something it means that they agree to the existence of a fact. Unless I have instructed you to the contrary, you must accept a stipulation as evidence and treat the fact which is stipulated to as having been proven.

Liability, in resolving the issues of liability in this case, there are certain rules of law that you must consider. With regard to this case, you are to consider the following rules of law. The element of proof in a defamation lawsuit are defamatory words, publication, falsity, actual or implied malice and resulting injury. Words that impute or accuse an individual of a crime are defamatory per se; malice and falsity are presumed; and the burden shifts to the Defendants to rebut the presumption.

If a state has contrived through a pretense of a trial, which in truth is but a means of depriving a Defendant of his liberty through a deliberate deception of the Court and Jury, by the presentation of testimony known to be perjured, such a contrivance of a conviction is as inconsistent with the rudimentary demands of justice as is obtaining a conviction by intimidation.

The plaintiff in a malicious prosecution case can establish malice in at least four ways under Louisiana law, number (1) showing that the Defendants, in bringing the proceedings, acted with feeling of hatred, animosity, or ill will toward him,

(2) use of the prosecution by the Defendants for the purpose of obtaining any private advantage, (3) making the charge with knowledge that it was false or with a reckless disregard for the truth or falsity or (4) inference of malice where there is a conscious lack of probable cause for the charge at issue.

In order to maintain an action for malicious prosecution, Plaintiff must show that the criminal proceedings in question was terminated in his favor. Malice is inferred in a malicious prosecution action from lack of probable cause or from a finding that the Defendants acted in a reckless disregard for the Plaintiff's rights.

The elements in a lawsuit based on malicious prosecution are: (1) commencement or continuation of criminal proceedings, (2) legal causation by defendants against the Plaintiff, (3) bona fide termination in favor of Plaintiff, (4) absence of probable cause, (5) presence of malice, (6) damages suffered by the Plaintiff.

Actual Malice" in a defamation lawsuit is defined as knowledge that a defamatory statement is false or made with a reckless disregard for whether it is false or not. Proof of malice is not required to establish defamation claim where words imputing a crime are used, as such words are defamatory per se.

In defamation actions involving statements which are defamatory per se, malice and falsity are presumed and the burden of proof shifts to the Defendants to rebut the presumption.

Where an indictment has been returned by a Grand Jury, that indictment is not conclusive evidence of probable cause to institute criminal proceedings, and any presumption of probable cause which may arise as the result of an indictment, if rebutted by proof that the indictment was obtained by false testimony, or by proof that the prosecution and/or the witness failed to make a full and complete statement of the facts to the Grand Jury, then no probable cause existed for the arrest and subsequent indictment.

Where there is a lack of probable cause resulting from a wanton and reckless disregard for the rights of the accused malicious prosecution will be inferred. Earning capacity in itself is not necessarily determined by actual loss, damages may be assessed for deprivation of what an injured Plaintiff could have earned despite the fact that he may never have been fit to take advantage of the capacity.

What the Plaintiff earned before and after the injury does not constitute the measure of damages for future lost wages. Even if he had been unemployed a the time of the injury he is entitled to an award for impairment of earning capacity. And while his earning capacity at the time of the injury is ability to earn a living. Damages should be estimated on the injured person's ability to earn money, rather than what he actually earned before the injury.

There is evidence tending to show that the Plaintiff has as a result of the occurrence involved in this action sustained injuries that are permanent in nature.

If you find the Plaintiff to be entitled to damages and if you find to a reasonable certainty that the injuries are of a permanent nature, then you must in assessing the damages take into consideration the Plaintiff's work life expectancy.

As an aid to you in determining this question evidence has been furnished as to the statistical life expectancy of the person of the age of the Plaintiff.

If is important that you should realize, should you find it necessary in your deliberations, to estimate plaintiff's life expectancy, that mortality tables only reflect statistical averages. You should also consider other factors that are in evidence for example the Plaintiff's condition of health, living habits, occupation, prospects and the like.

Damages for loss of earning capacity should be estimated on the injured person's ability to earn money, rather than what he actually earned before the injury. While his earning capacity at the time of the injury is relevant, it is not necessarily determinative of his future ability to earn.

Probable cause exists when facts or circumstances within the knowledge of the arresting officer and of which he has reasonable and trustworthy information are sufficient to justify a man of average caution in the belief that the person to be arrested has committed or is comitting an offense.

If you find from the evidence that any witness has been convicted of other crimes, then I charge you that you are not to consider his having been convicted of the said previous offenses and crimes as proof of his guilt of this charge, but you are to consider such previous convictions only in deciding the weight you are to give to his testimony as a witness.

Damages, in determining an award for damages, you should consider both general and special damages. However, you should not conclude that because I am going to speak to you about damages that I believe that the plaintiff should recover. This is only for you to decide and my opinion no matter what you think it is not relevant.

In determining an award for general damages, you are vested with much discretion. By the phrase "general damages" we mean a sum of money that you feel would fairly and adequately compensate the plaintiff for the pain, suffering, mental anguish, loss of lifestyle that the plaintiff has suffered or may suffer in the future.

Insofar as a claim for general damages by a spouse or children of an injured person, the spouse or children may recover for a loss of consortium service, and society; this included the loss of companionship, association, love, affection, conjugal relations, and normal household functions. However, you should keep in mind that any award for general damages is not subject to the payment of federal or state income taxes.

By special damages, we mean out-of-pocket expenses or actual or anticipated losses which plaintiffs have sustained or will sustain as a result of the incident. These may include such items as past and future lost wages, and impairment of earning capacity. In considering lost wages, you should consider gross wages.

Future loss wages, diminished earning capacity, in assessing an award of damages for loss of future wages, or for impairment of earning capacity, you are instructed that this cannot be calculated with a mathematical certainity but that you, as jurors, should determine this award after a consideration of the following factors:

You are to consider the plaintiff's work record, the amount of the plaintiff's earnings in the previous years, the probability or the improbability that the plaintiff would have earned similar amounts during the remainder of the plaintifff's worklife if the plaintiff had not sustained the injury for which he has filed this lawsuit. You should also consider the motivation of the plaintiff to return to work, the decreasing purchasing, power of the dollar and you should consider the plaintiff's gross wages.

The plaintiff must prove both general and special damages by a preponderance of the evidence. And by this I mean that after consideration of all the evidence that you, as jurors, find that the existence of a fact is more probable than its non-existence. However, again you should keep in mind that speculation, guessing and a mere possibility is not sufficient to establish the existence of a fact.

In Louisiana, punitive damages are not allowed and you should not, by your award to punish the defendant. In assessing damages, you should seek only to reasonably compensate the plaintiff for the damages you find the plaintiff has suffered or will suffer.

Experts, the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. But an expert witness who, by education and experience, have been recognized by the Court as expert in some profession may state an opinion as to relevant and material matters in which they are expert. You should consider each expert's opinion received in evidence and give it such weight as you think it deserves.

Even though a person has been accepted by the Court as an expert, if you decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion entirely or give it only such weight as you decide it deserves, if any.

Opinion of doctors, the opinion of a doctor as to the condition of a patient may be based upon entirely objective symptoms revealed through observation, examination, tests or treatment; or the opinion may be based entirely on subjective symptoms, revealed only through statements made by the patient to the doctor, or the opinion may be based on both objective and subjective symptoms.

To the extent any opinion testified to by a doctor is based upon history or subjective symptoms described to the

doctor by the patient, you should consider the truth or falsity of the patient's statements in determining the weight to be given to the doctor's opinion.

In conclusion, you will remember that I told you at the beginning of the trial that you were not to discuss the case amongst yourselves. That restriction is now removed. It is now your duty to consult with one another and to deliberate, with a view towards reaching an agreement, if you can do so without violence to your individual judgment.

Each of you must decide the case for yourself, but you should do so only after a consideration of the case with your fellow jurors and you should not hesitate to change your opinion when you are convinced that you are wrong.

However, you should not be influenced to vote on any question which you have to decide by the fact that a majority of your fellow jurors agree with and you don't.

In your deliberations, you are not to give any additional weight to notes taken by a juror merely because that juror chose to take notes or because his or her notes may be different from your own. You are expected to rely on your memory and any notes you chose to take in forming your opinion.

Louisiana law requires that nine of you agree in order to render a verdict for either side. When nine of you are of the same opinion about the verdict that ends your deliberation and that opinion becomes your verdict.

The first thing that you should do before beginning your deliberations is to choose from amongst yourselves a person to represent you in signing the verdict form. This person will be the foreperson. When you have reached a verdict, this foreperson will sign and date the verdict form. You will conduct your deliberations in the courtroom. I will now explain to you this verdict form.

Members of the jury, please indicate your answers to the following questions in the spaces provided, nine of you must agree on an answer before recording your answer on the verdict form. Number 1, do you find that the plaintiffs have proven by a preponderance of the evidence the defendant, Lloyd West, defamed Roland Gibson, Sr.? Your answer may be yes or no.

Number 2, do you find by a preponderance of the evidence that the plaintiff, Roland Gibson contributed to his arrest and conviction and incarceration? Your answer may be yes or no.

Number 3, what percentage of fault, if any do you attribute for the damages the plaintiffs have suffered as a result of the arrest, conviction and incarceration of the plaintiff, Roland Gibson, Sr.? Your total must equal 100%, Lloyd West, City of New Orleans, none parties, Roland Gibson, and your total must equal 100%.

If you assign any percentage of fault to the plaintiff, Roland Gibson you are to make a full award of damages and not, I repeat, do not make any adjustment for any percentage of fault that you assess to Roland Gibson. Do I make myself clear?

Number 4, what amount, if any, in total expressed in dollar amount do you award to the plaintiff? A. Roland Gibson, Sr., Jessie Gibson, Roland Gibson, Jr., Dennis Gibson. Please sign and date this form.

Ladies and gentlemen, also you are permitted to use the jury instructions during your deliberations should they become necessary just have the foreperson knock on my door.

Additionally, if you have questions during the course of your deliberations, the court can not answer any individual questions. You must give those questions to your foreperson in writing and the court will address them at that time. Should you need any of the evidence that has been offered into the record just knock on my door and I will provide it to you.
(AFTER DELIBERATION)

Ladies and gentlemen of the jury, it's my understanding that you all have reached a verdict in this case. Ms. Dublach, it is my understanding you are the jury foreperson. Would you pass the jury verdict form to Mr. Carter.

Civil District Court for the Parish of Orleans, State of Louisiana, Roland Gibson, et al versus Lloyd West. Civil case number 93-2517, Division "A", jury interrogatories. Members of the jury, please indicate your answers to the following questions in the spaces provided, nine of you must agree on an answer before recording your answer on the verdict form.

Do you find the plaintiffs have proven by a preponderance of the evidence that the defendant, Lloyd West, defamed Roland Gibson, Sr.? The answer to that question is yes.

Question number 2, do you find by a preponderance of the evidence that the plaintiff, Roland Gibson contributed to his arrest and conviction and incarceration? The answer to that question is no.

Question number 3, what percentage of fault, if any do you attribute for the damages the plaintiffs have suffered as a result of the arrest, conviction and
New Orleans, 75%; none parties, 0%; Roland Gibson, 0%.

Ms. Gordon, is this your verdict? Yes.

Mr. Cartier, is this your verdict? Yes.

Mr. Gomez, is this your verdict? Yes.

Mr. Andrews? Yes, it is, judge.

Ms. King? Yes.

Ms. Johnson? Yes, ma'am

Ms. Davis? Yes.

Ms. Duboch? Yes.

Ms. Morris? Yes.

Ms. Richard? Yes.

Ms. Burk? Yes.

Mr. Hawkins? Yes.

What amount, if any, in total expressed in dollar amount do you award to the plaintiff? A. Roland Gibson, Sr., $16,000,000.00; B. Jessie Gibson, $9,000,000.00; Roland Gibson, Jr., $2,500,000.00; Dennis Gibson, $2,500,000.00.

Ms. Gordon, is this your verdict? Yes.

Mr. Cartier, is this your verdict? Yes.

Mr. Gomez? Yes.

Mr. Andrews? Yes, it is, judge.

Ms. King? Yes.

Ms. Johnson? Yes, ma'am.

Ms. Davis? Yes.

Ms. Duboch? Yes.

Ms. Morris? Yes.

Ms. Richard? Yes.

Ms. Burk? Yes.

Mr. Hawkins? Yes, ma'am.

Again, thank you all so very much for your attention and patience over the last three days.

CERTIFICATE

I, ANGELA M. COLEMAN, do hereby certify that the foregoing pages, contain a true and correct transcript, to the best of my understanding in the matter of Roland Gibson, versus City of New Orleans, case number 93-02517, Division "A", Civil District Court, Parish of Orleans, State of Louisiana.

That the testimony was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That I am not of counsel, not related to counsel or the parties hereto, and not in anywise interested in the event of this suit.

Angela Marie Coleman
ANGELA MARIE COLEMAN
OFFICIAL COURT REPORTER

APPENDIX G

BEST AVAILABLE COPY

NEW ORLEANS DEPARTMENT OF POLICE

OFFENSE AGAINST PERSON CASE REPORT

CARD MADE x x

49 F

HOMICIDE (murder) L-21925-67 Seventh 7:3 701

ATTEMPT ☐ about 8:30PM 12/30/67 Saturday 12/31/67 9:2 AM

800-bl Old Gentilly Rd. approx. across Rd. from NOPSI pole #64 Taxi-cab driver

Charles [illegible]elncke W M 43 2450 Gladiolous Street, N.O. La.

Discovered by Police

Adam Bowie, Sr. W M 62 Box 8305 Old Gentilly Road

1966 Plymouth sedan

68 La. Lic. J-662 Taxi X X

Small caliber gun gunshot wound of head none

none gunshot wound right side of head Unit 227 G. Boote

Dr. J. Medina 10:25 AM 12/31/67 Ptn. G. Dugas 10:30 AM car 701 Ptn. G. Dugas 4017

☐ ☐ DOMESTIC TROUBLE ☐ JEALOUSY ☐ ☐ ☐ ☐ ☐

See continuation sheet Sam Moran investiator for Coroner's Office

D. Schnapp & C. Dasalla 3140 Malcolm Goode X ☐ Sam Moran

Unknown

6n

UNKNOWN for questioning only W M 30 5/11 160 ? ? blond unshaven

[illegible] shirt, blue jean trousers, carrying white, or light colored jacket

X

SEE CONTINUATION SHEET

IDENT. ☐ CLEARED BY ARREST ☐ OFFENDER KILLED ☐ CONFESSION ☐ SUICIDE ☐ UNFOUNDED ☐ OTHER ☐

Officer Badge Reporting Officer Badge Supervisor approving Captain Lloyd [illegible] Date of Report

RECORDS DIVISION

CONTINUATION SHEET CASE
NEW ORLEANS DEPARTMENT OF POLICE

Page 2 of 5 pages	**Kind of Report continued** Offense against person

Offense-Charge or Incident	**Name of Victim XXXXXX**
murder	Charles S. Reincke

Item No.
L-21925-67

Lt. Minor Babin assigned to car #710 in company with Patn. Gerald Dugas assigned to car #701 report of conducting an investigation into the murder of one Charles S. Reincke, WM, age 43 yrs. formerly residing 2450 Gladiolous Street, N. O., La. as follows:

At about 9:02 PM on December 30, 1967 car #703 manned by Patn. M. Nunez and Cadet Louis S. Dabdoub, Jr. recovered abandoned Yellow Cab #662 with the engine running, lights burning and windshield wipers operating. This is a 1966 Plymouth fordor painted yellow, bearing 1968 Taxi Louisiana license #1-662, the property of the Toye Brothers Yellow Cab Co. 1600 Annunciation Street. The Driver of the vehicle was not present and could not be located by Officers Nunez and Dabdoub. Upon inspection of the vehicle the Officers found what appeared to be blood stains on the floor on the driver's side in the front. Officers Nunez and Dabdoub suspecting that the Driver of the vehicle in question may have been the victim of foul play notified car 710 Lt. Curtis Gaudet, Platoon Commander. Members of the Homicide Division and Bureau of Identification, along with members of the K-9 Division were summoned to the scene and along with members of the Seventh District conducted a search of the vicinity in an attempt to locate the driver of the

vehicle in question. A representative of the Yellow Cab Co. was contacted and it was learned that Cab #662 had been assigned to one Charles S. Reincke, WM, 43 yrs. residing 2450 Gladiolous Street. The vehicle in question after being checked by members of the B of I and homicide Division was ordered impounded for further investigation and was towed by tow wagon #4215 manned by Patn. L. Elsensohn. A search of the area was continued during the night by members of the 7th District, Homicide Division and K-9 Division but due to darkness and inclement weather proved fruitless.

Reporting Officer	**Badge**	**Date of Report**
Lt. Minor Babin	118	1 - 1 - 68
Supervisor Approving		
Captain Lloyd Poissenot		

CONTINUATION SHEET (CASE)
NEW ORLEANS DEPARTMENT OF POLICE

	Kind of Report continued
Page 3 of 5 pages	Offense against person

Offense-Charge or Incident	**Name of Victim XXXXXX**
murder	Charles S. Reincke

Item No.
L-21925-67

At about 8:30 AM on 12/31/67 the search of the vicinity of the 9000 block of Old Gentilly Road was continued by Lt. Minor Babin, car 710, Patn. Gerald Dugas car 701 and Patn. Joseph Madere and Billy Short car 706. The above Officers were assisted in the search by 18 members of the Crescent

City Civilian Band Operators, under the supervision of their President Mr. Leroy J. Thibodeaux. A short time later Captain Henry Morris, Chief of Detectives arrived on the scene, along with other members of the Detective Bureau and took over direction of the search.

A search of the area was continued until about 9:20 AM on 12/31/67 at which time a body was found by one Mr. Adam Rome, Sr., WM, age 62 yrs. residing box 8305 Old Gentilly Road, a citizen who had volunteered to assist in the search. The body was located submerged in a flooded ditch, face up, on the Lake side of Old Gentilly Road in aout the 8800 block at a point approximately across the roadway from NOPSI utility pole #64, with the head toward the west and the feet toward the east. At this time the radio dispatcher was contacted and advised to notify Homicide Division, Bureau of Identification and the Coroner's Office that the body had been found.

At about 10:00 AM 12/31/67 Sgt. J. Schnapp and Det. C. Desalla of the Homicide Division arrived on the scene and began their investigation for the Detective Bureau. Technician Malcolm Goodg arrived on the scene and took the necessary photographes for the Bureau of Identification. Asst. Coroner Dr. I. Medina and Investigator Sam Moran also arrived on the scene and conducted their investigations. The body was removed from the ditch and placed on the roadway by Patn. Joseph Madere and Patn. Billy Short both assigned to the Seventh District. The body was examined by Dr. I. Medina and pronounced dead at

Reporting Officer	**Badge**	**Date of Report**
Lt. Minor Babin	118	1 - 1 - 68
Supervisor Approving Captain Lloyd Poissenot		

CONTINUATION SHEET CASE
NEW ORLEANS DEPARTMENT OF POLICE

	Kind of Report continued
Page 4 of 5 pages	Offense against person

Offense-Charge or Incident	**Name of Victim XXXXXX**
murder	Charles S. Reincke

Item No.
L-21925-67

10:25 AM on 12/31/67. Sam Moran special investigator for the Coroner's Office searched the body and removed the below listed articles, which he retained in his possession.

1-One white metal ring with blue stone, taken from ring finger of right hand.

2-One white metal timex man's wrist watch with stretch band, taken from right wrist.

3-One yellow metal ring with clear stone, taken from ring finger of left hand.

4-One key ring with a cluster of keys on each end.

5-One vicks inhaler taken from left jacket pocket.

6-One white metal cigarette lighter, Penquin brand.

7-Two quarters and four nickels

8-Two one dollar bills taken from left top shirt pocket.

9-One white metal Parker ball point pen taken from left shirt pocket.

10-One white metal chain with white metal religious meda taken from around the neck.

Body tag #4017 was affixed to the left ankle of the body by Patn. Gerald Dugas at 10:30 AM on 12/31/67. Crime Lab. Technician Milton Cox checked the body before it was placed into the morgue wagon. The body was conveyed to the City morgue in unit #777 manned by G. Boote

and accompanied by Patn. G. Dugas.

At the Coroner's Office it was determined that the victim had been shot in the right side of the head with an unknown small calibre gun. The body was subsequently identified by a relative and learned to be one Charles S. Reincke, formerly residing 2450 Gladiolous street, N. O., La. and had been employed.

Reporting Officer	**Badge**	**Date of Report**
Lt. Minor Babin	118	1 - 1 - 68
Supervisor Approving		
Captain Lloyd Poissenot		

CONTINUATION SHEET (CASE)
NEW ORLEANS DEPARTMENT OF POLICE

	Kind of Report continued
Page 5 of 5 pages	Offense against person

Offense-Charge or Incident	**Name of Victim XXXXXX**
murder	Charles S. Reincke

Item No.
L-21925-67

as a taxi driver by the Toye Brothers Yellow Cab Co., located at 1600 Annunciation street, N. O., La.

A further investigation into this matter is being conducted by members of the Homicide Division of the Detective Bureau.

Deputy Superintendent of Police Presly J. Trosclair was at the scene and assumed command of the entire investigation.

Captain Henry Marris, hief of Detectives was at the scene and directed the investigation for the Detective Bureau.

Captain Lloyd J. Poissenot was at the scene and directed the investigation for the Seventh District.

Any further development in this matter will be followed by a supplementary report.

Headquarters and all Districts and Divisions notified by teletype bulletin.

Reporting Officer	**Badge**	**Date of Report**
Lt. Minor Babin	118	1 - 1 - 68
Supervisor Approving		
Captain Lloyd Poissenot		

SUPPLEMENTARY REPORT
NEW ORLEANS DEPARTMENT OF POLICE

4.Original Offense or incident	**2. Item**	**3. Dist/Occ**
Murder	L-21825-67	7th

5.Location of Offense or incident **6. Date of Offense**
600 Blk. Old Gentilly Rd. 12-30-67

7.Victims Name **8. Classification of Off.**
Reincke, Charles Bernard, WM RS 14, Art 30

9. Is this Multiple clear-up - List Item numbers

YES ❑ NO ❑

10. Status (Check One)

Cleared ❑ Not Cleared ❑ Unfounded ❑

11. Clearance Credit

25

12. If cleared, Check How Cleared

are ❑ Comp. Refuses to Prosecute ❑
Suicide of Offender ❑ Death of Offender ❑

ON ❑ Cleared by Identification ❑
Prosecuted Outside Jurisdiction ❑

ARRESTED SUBJECTS: 1 - Lloyd West WM, 19 years, residing 1458 Senate, Apt. E.
2- Roland Gibson, WM, 20, residing 4006 Duplessis St.

CHARGED: RS 14, Art. 30 relative to murder of CHARLES BERNARD REINCKE, WM
RS 14, Art. 64, relative to armed robbers of the same victim.

NOTE: ROLAND GIBSON booked additionally under Item C-21329-68, with Art 34 (4 counts) simple battery on Sgts. Eugene Fields and Charles Hinton, and Dets. James Miller and Alex Vega, and RS 14, Art. 108 Resisting arrest, and Art. 27-110, attempt simple escape, under item C-21329-68.

WITNESSES: Sgt. Eugene Fields and Det. James Miller, Det. Bureau, Sgt. Charles Hinton and Det. Alex Vega, Det. Bureau, Capt. James Kruebbe, Det. Bureau, Sgt. Ed O'Donnell Sgt. Robert Hamilton, Sgt. Jake Schnapp, Det. Clem DaSalle, Homicide Division Sgt. John Phillips, Det. Bureau, Det. Gerald Dugas, Homicide Division Lt. Minor Babin, Patn, Manuel Nunez, 7th District

14. Unit Reporting	**15. Reporting Officer**	**Badge**
Det. Bureau	Sgt. Eugene Fields	297

Reporting Officer	**Badge**	**Supervisor Approving**
Det. James Miller	1433	Capt. A. Polito

16. Date of Report
5-10-68

CONTINUATION SHEET CASE
NEW ORLEANS DEPARTMENT OF POLICE

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Offense-Charges or Incident	**Name of Victim or Arrestee**
RS 14, Art. 30	Reincke, Charles Bernard

Item No.
L-21815-67

Petn. Louis Dabdoub, Jr. 5th District

Lt. Louis O'Neil and Det. Malcolm Goode, B of I

John Koch, Sam Moran, Coroner's Office, Dr. I. Madina, Coroner's Office

Adam Rome, WM, 62 yrs., residing 8501 Old Gentilly Rd.

Dorothy Mae Thoraton, WF, 30 years, 3712 Bruxelles St.

Dudley Thoraton, NM, 30 years, 3712 Bruxelles St.

Thomas Crayton, NM, 30 years, 1425 Laharpe St.

Wilhelmina West NF, 38 years, 1458 Senate, Apt. E.

Jerome West, NM, 11, 1458 Senate, Apt. E.

Sgt. Eugene Fields and Det. James Miller would report of being instructed by Catp. James Kruebbe on 3-27-68, to

pursue the investigation into the murder of Charles Bernard Reincke, WM, which occurred on 12-30-68.

Upon reviewing the case file, these officers noted that on January 29, 1968, Lt. Louis O'Neil of the B of I had advised that he had matched the partial print, found on the left rear window of the victim's cab with the left middle finger of one LLOYD WEST, WM, who had been arrested on charges of aggravated battery, committed with a .22 caliber pistol. Lt. O'Neil stated that he had found SEVEN (7) points of identification, matching the latent print with that of Lloyd West. Lt. O'Neil advised further that he felt that the print was conclusive evidence, he felt that additional evidence

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving Capt. A. Polito			

16. Date of Report
5-10-68

CONTINUATION SHEET CASE

Page 3 of 13 pages	**Kind of Report Continued** Supplemental
Offense-Charges or Incident RS 14, Art. 30	**Name of Victim or Arrestee** Reincke, Charles Bernard

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should be obtained to strengthen the case.

After this information was passed onto the Homicide Division, D/Sgt. Edmund Gormen, ran ballistics tests on the .22 caliber weapon which West had been arrested with however these tests were inconclusive due to corosion in the bore of the weapon.

On 1-29-68 Lloyd West was brought to the Homicide Division by Dets. Clem DeSalle and Coker. West was then interrogated by Sgt. Robert Hamilton and Det. DeSalle and was informed of the fingerprint which had been found in the cab. West denied any knowledge of the murder and furthermore denied EVER RIDING IN ANY WHITE TAXI. He stated that on Saturday, December 30, 1967, sometime in

the afternood, he went to the Lafayette Apts. 1478 LaFrenier and visited with some friends until late that night when the friends brought him home. He stated that he had been with Dorothy Thornton and her husband, whom he knew only as "James" and with one Thomas Crayton, NM, who resided in Apt. 2 at that same address.

Upon completion of interrogation of Lloyd West, Dest. Desalla and Coker went to 1478 Lafrenier, Apt. 12, where they interviewed Dudley (James) Thornton and his wife Dorothy. Dudley Thornton, stated that he knew Lloyd West, only as a friend of Thomas Crayton, and further that he (Thornton) was out of the city working on 12-30-67.

Dorothy Thornton, when interviewed stated that she did not have any type of party at her house on 12-30-67, but did

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. Eugene. Fields	1433	Det. James Miller	1433
Supervisor Approving		**16. Date of Report**	
Capt. A. Polito		5-10-68	

CONTINUATION SHEET (CASE)

Page 4 of 13 pages	**Kind of Report Continued** Supplemental
Offense-Charges or Incident RS 14, Art. 30	**Name of Victim or Arrestee** Reincke, Charles Bernard

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recall lending a portable T.V. set to Thomas Crayton during the New Years holidays and that Lloyd West was with him at that time.

Efforts to locate Thomas Crayton in Apt. 2, proved negative, Crayton having moved, leaving no forwarding address.

Due to a heavy workload of homicide cases, coupled with a shortage of manpower, the investigation was not pursued further at that time.

After reviewing the aforementioned facts on 3-27-68, Sgt. Fields and Det. Miller decided to pursue the investigation with regards to Lloyd West further in order to eliminate or

strengthen his role as a suspect in the case.

Sgt. Fields and Det. Miller went to the B of I where they again discuessed the fingerprint identification with Lt. O'Neil. Lt. O'Neil advised at that time that he had in fact found eight (8) points of identification.

Sgt. Fields and Det. Miller at about 1:00 PM, 3-27-68 went to 1478 Lafrenier St. but learned that the Thorntons had moved to 3712 Bruxelles St. Upon going to that location the officers were informed that W. Dudley and Dorothy Thornton would be home after 4:00 PM, same date.

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. Eugene Fields	297	Det. James Miller	1433
Supervisor Approving		**16. Date of Report**	
Capt. A. Polito		5-10-68	

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CONTINUATION SHEET CASE

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Officers returned at 4:15 PM, same date and then interviewed both Dudley and Dorothy Thornton, separately. Dudley Thornton stated at this time that he had made a mistake previously when he told Dets. DeSalle and Coker that he had been out of town on 12-30-67. Stated further that he had been home all night on 12-20-67, with his wife and that Thomas Crayton had been over and had a few drinks with them. He stated without hesitation that LLOYD WEST HAD NOT BEEN TO HIS HOUSE ON THE NIGHT OF 12-20-67. He further stated that the only time during the New Years holidays that he saw Lloyd West was on New Years' day when West and Crayton came to the apartment together and borrowed a T.V. set to watch the Rose Bowl

game.

Dorothy Thornton was questioned and she related basically the same story as her husband. Both of the Thornton's were brought to the Det. Bureau where they both made written statements and identified a photo of Lloyd West. It was further learned from the Thorntons that Thomas Crayton was staying with his family at 1425 Laharpe St.

At about 7:40 PM, 3-27-68, Thomas Crayton was brought to the Detective Bureau where he also made a written statement. Crayton also stated that West was positively not with him on 12-30-67. Crayton stated that Lloyd West and a friend of his known only as "Roland", who was alledged to have been AWOL from the Army at the time. Crayton stated that he left his apartment sortly before noon on 12-30-67,

leaving West and Roland in the apartment. When he returned later in the afternoon, both subjects were gone and he did not see West again until New Years Day.

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
Capt. A. Polito		5-10-68	

CONTINUATION SHEET CASE

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1-21815-67

On 3-28-68, upon reporting to work, Sgt. Fields and Det. Miller went to the Armed Forces Police Detachment in an effort to obtain the identify of the AWOL soldier, "Roland" who had been with Lloyd West.

A check of their records revealed the subject to be one ROLAND Joseph GIBSON, WM, 20, 4006 Duplessis. Army records reflected that Gibson was reported to the local A.F.B.D. as being AWOL from Ft. Campbell, Ky., as of 7:00 AM., 12-30-67 that that he could have been gone as much as 48 hours prior to that time. Gibson was subsequently apprehended at his residence on 1-9-68 and returned to the stockade at Fort Polk and subsequently discharged

from military service. Photos were obtained of Roland Gibson.

On 3-29-68, Sgt. Fields and Det. Miller went to 4519 Clara St. in an effort to locate Lloyd West, but learned that he had moved to parts unknown. West was located at his mother's house, by Car 308, 3rd District, who conveyed him to the Det. Bureau where he met Sgt. Fields and Det. Miller.

He was advised that he was a suspect in the murder and rights of arrestee from #20893 was completed which West signed. He was shown copies of the statements made by the Thorntons and Crayton, which refuted his alibi for the night of 12-30-67, and he then changed his story, saying that he had made a mistake, that on the night of 12-30-67 he had stayed home with his mother.

Reporting Officer	Badge	Reporting Officer	Badge
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
Capt. A. Polito		5-10-68	

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Sgt. Fields contacted Dets. N Knaps and E. Knight and requested that they locate Mrs. West and bring her to the Det. Bureau.

Mrs.West arrived in the Det. Bureau at about 9:15 PM, 3-29-68 and she was informed that her son was a suspect in a murder and that he had given her as an alibi on 12-30-67. She stated that Lloyd was not telling the truth, saying she remembered because it was the day before New Year's E and she had wanted him to stay home and paint the kitchen, but he had refused and gone out. She was asked if she would be willing to speak with her son and she agreed. Lloyd West was brought into the office and his mother, in the presence of Sgt. Fields and Det. Miller again stated that he was not

telling the truth about being home on 12-30-67, West still maintained his innocence and his mother asked to speak to him alone and this was agreed upon. A few minutes later, Mrs. West stated that she had spoken to Lloyd but he still maintained his innocence and that he knew nothing about the murder and was willing to take a ploygraph test.

Sgt. Edward O'Donnell Polygraph Operator was contacted and requested to come to the office and administer a test to Lloyd West.

At about 11:00 PM, Lloyd West was taken to the Polygraph office by Sgt. O'Donnell. At about 11:35 PM, Sgt. O'Donnell called Sgt. Fields in the office and requested that he and Det. Miler come downstairs. On arrival officers were informed that results of te test had indicated deception and West at this time admitted being involved in the murder, but saying

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Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
Capt. A. Polito		5-10-68	

CONTINUATION SHEET CASE

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that Roland Gibson had done the shooting. West was taken back to the Det. Bureau where his mother was waiting and he related in her presence his confession. He was asked by Sgt. Fields if he would be willing to report the confession on video tape and he agreed. It should be noted that there was a delay in conducting the video-taped interrogation, due to the equipment being locked up.

At 1:45 AM, 3-30-68, Lloyd West repeated his confession on videotape, in the presence of his mother Wilomina West. Interrogation conducted by Sgt. Fields, with Det. Malcolm Goode operating equipment. Interrogation completed at 1:55 AM, 53 feet of film used. The reel of film was properly marked for identification and placed in the safe in Major

Henry Ferris's[sic] office to be held as evidence. West was booked in CLU at 2:10 AM, as stated herein.

Mrs. West, on learning that officers were going to attempt to effect the arrest of Roland Gibson advised officers to use caution, saying that "Gibson" was "Crazy" and used to beat and abuse his family and would probably try and shoot it out if he had a gun.

A search warrent was drawm up for the residence of Roland Gibson, 4006 Duplessis and signed by Judge Oliver Schmlingkemp, since West in his confession had stated that the murder weapon was under a mattress in Gibson's bed-room.

At about 4:00 AM, Capt. James Kruabbe, Sgt. Fields, Sgt. Minton, Sgt. J. Vitari, Dets. Miller, Buras and Eisemann went to 4006 Duplantis where they served the warrent on Mrs. Gibson, mother of Roland Gibson, who advised that her son

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
Capt. A. Polito		5-10-68	

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Item No.
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was out drinking. A search of the residence at that time failed to produce the weapon. Sgt. Hinton and Det. Bega[sic] remained in the residence while other officers began to check the surrounding bars and area in search of Gibson.

At about 6:20 AM, Roland Gibson arrived home and when Sgt. Hinton and Det. Bega attempted to handcuff him and advise that he was under arrest he began struggling and cursing loudly, causing a disturbance and waking up many of the neighbors in the area. Gibson at the time of his arrest was in an intoxicated state and appeared to be under the influence of some type of drug. He continued to curse and shout until he was placed in the police car and conveyed away from the scene, by Sgt. Hinton and Det. Bega. While on route to the

office Gibson calmed down. on arrival at Headquarters he was brought into the Homicide Office by Sgt. Hinton and Det. Vega where Sgt. Fields and Det. Miller were waiting Sgt. Fields instructed Det. Vega to fill out a rights of arrestee form and advised Sgt. Hinton to remove the handcuffs from Gibson. Sgt. Hinton removed the handcuffs and as Det. Vega began to read the Rights of Arrestee form #30894, advising Gibson that he was being charged with murder and armed robbery, Gibson leaped from the chair, shouting that he was not going to be framed for no M.... F... murder. Hinton grabbed at Gibson from the rear and Sgt. Fields who was seated in front of him attempted to grab Gibson. Gibson swong at Sgt. Fields punching him in the mid-section. Det. Vega and Det. Miller, came to the officers assistance and succeeded in suduing Gibson and again handcuffing him. Gibson continued to shout and curse and became completly incoherent. The Rights form was completed and Gibson was taken to the C.L.U. and booked as stated, being charged additionally with simple battery on the officers, resisting arrest and attempt simple escape, under Item c-21329-68.

Reporting Officer	Badge	Reporting Officer	Badge
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
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Offense-Charge or Incident **Name of Victim or Arrestee**

RS 14, Art. 30 Reincke, Charles Bernard

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At about 2:00PM, 3-20-68, Sgt. Hamilton brought Roland Gibson to the office where he and Major Morris again attempted to interrogate Gibson, but Gibson was STILL INTOXICATED at that time.

Upon reporting back to duty at 10:00 PM, 3-30-68, Sgt. Fields and Det. Miller picked up Lloyd West at the C.L.U. and returned him to the Det. Bureau where thay informed

him that Gibson had denied being involved in the murder and a search of the residence had failed to produce the gun.

West at this time told the officers that he had not told the complete truth. He stated that he had the murder weapon at his house but that he had been afraid to tell the officers because he was afraid that they might think that he had shot the man instead of Gibson. He described the gun as a .22 cal. black revolver, rusty, with black tape on the handles, barrell about 4-6 inches long. Stated that the gun was at his mother's house in his room, between the mattress and the box springs. We again agreed to go on videotape, explaining why he lied previously and telling where the gun was at. At 10:55PM, Lloyd repeated his confession on videotape, being interviewed by Sgt. Fields with Tech. John Reilly operating the machine. Interview was completed at 10:59 PM, with 34 feet of tape being used.

A search warrant was then drawn for Lloyd West's residence, 1458 Senate, Apt. E, which was signed by Judge Schulingkemp. At 12:15 AM, 3-31-68, Sgt. Fields and Det.

Miller served the warrant on Mrs. West, explaining what her son had told them about the weapon. West's younger brother Jerome, age 11 years, on overhearing the conversation between Sgt. Fields and

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Mrs. West, asked if the officers were looking for a black gun. When informed that they were, Jerome West stated that on Monday, March 26, 1968, he was hiding some money under the mattress in Lloyd's bed and he found a black gun between the mattress and boxsprings and brought it out in the yard and was playing with it. He stated that he left it on his back porch and went for a ride on his bike and when he returned a few minutes later the gun was gone. Mrs. West stated that she recalled Jerome telling her something about finding a gun but had assumed that he was talking about a

toy. Jerome was asked to describe the gun and he gave a description which matched closely with that given by Lloyd West. Jerome West was taken to the Juvenile Bureau by Dets. Leary Adams and Kilsworth Frank where a written statement was taken from Jerome West and will be included in this report.

A message was sent alerting all divisions of the Department to have any confiscated .22 weapons checked by the B of I in an effort to recover the murder weapon.

On 4-1-68, Sgt. Robert Hamilton went to the Parish Prison in company with Mr. Gerald Ariud, court appointed attorney for Lloyd West and Mr. Joseph Gibson, uncle of the suspect.

Gibson, after being advised of his rights by Mr. Arillo denied any knowledge of the murder and stated that he was relieved from duty at 12:00 Noon, 12-30-68 (NOTE..AFTD records show him being reported as AWOL as of 7:00 AM,

12-30-68.

Reporting Officer	Badge	Reporting Officer	Badge
Sgt. E. Fields	397	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
Capt. A. Polito		5-10-68	

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He stated that he and specialist 4th class William Walters were together until about (8:00PM)[sic] 12-30-67 when they parted company in Clarksville Tenn. He stated that he caught a Greyhound bus in Clarksville at about 10:00 PM, arriving 12-31-67 at about 3:00AM. Statement of Thomas Crayton and Lloyd West both show Gibson was at Crayton's apartment on the night of 12-29-67. Gibson fur-

ther stated that he had been on duty until noon, 12-30-67 with a soldier Specialist 5th. Monroe. Gibson also at that time showed Sgt. Hamilton a pay voucher 602239 dated, 12-29-67, in the name of Roland Gibson for the pay period Dec. 1-31, 1967. Gibson stated that he received pay for this voucher on 12-30-67. He also stated that he had a bus ticket stub at his hgouse which would prove that he had left to come to N.O. on 12-30-67 and that his mother could produce the ticket. Joseph Gibson stated that he would locate the ticket and turn same over to Sgt. Hamilton.

At 8:45 Am, 4-2-68, Sgt. Hamilton called Fort Campbell, Ky. and spoke to Sgt. Gilberto Selinas, who was informed that Gibson was under charges here and requested all information as to the time Gibson was reported AWOL, received his pay voucher and any information that could be obtained from the two soldiers, Sp. Monroe and Williams.

At 9:15 AM, date, Sgt. Salinas called Sgt. Hamilton back and advised the following:

Sp. 4th Williams and Sp. 5th Monroe had both been reassigned and were presently in Viet Nam. Roland Gibson was efficially reported as AWOL at 0700 hours (7:00AM) 12-30-67) as had been previously stated by the local AFFD, which

meant that Gibson had actually heen AWOL since sometime on 12-29-67. Mr. William L. Donsbach, Post Finance Office, Ft. Campbell advised that Gibson was paid with the aforementioned pay voucher on 12-29-67.

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
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Local C.I.D. unit, U. S. Army has been contacted and requested to locate Sp. Monroe and Williams and obtain statements from them. As of the writing of this report no reply has been received.

Roland Gibson's mother was contacted on two different

occasions on 4-2-68 and she advised Sg.t Hamilton that she is unable to find the bus ticket which Gibson was referring to.

Copies of Roland Gibson's discharge (showing the AWOL date of 12-30-67 and of the pay voucher will be included with this report.

Office of the Honorable District Attorney will be consulted.

ENCLOSURES: Statement of Dorothy Thornton, WF

Statement of Dudley Thornton, WM

Statement of Thomas Crayton, WM

Statement of Jerome West, WM

Search Warrant and Application for 4006 Duplesis, residence of Roland Gibson.

Search Warrant and Application for 1458 Senate, Apt E. residence of Lloyd West.

Copy of discharge and pay voucher of Roland Gibson.

Reporting Officer	**Badge**	**Reporting Officer**	**Badge**
Sgt. E. Fields	297	Det. James Miller	1433
Supervisor Approving		**Date of Report**	
Capt. A. Polito		5-10-68	

APPENDIX H

CRIMINAL DISTRICT COURT FOR
THE PARISH OF ORLEANS

STATE OF LOUISIANA

Case No. _____ Item No. L-21825-67

SEARCH WARRANT

ORDER OF SEARCH

TO: THE SUPERINTENDENT OF THE NEW ORLEANS DEPARTMENT OF POLICE and/or HIS DESIGNATED REPRESENTATIVE(S).

AFFIDAVIT(S) HAVING BEEN MADE BEFORE ME BY Detective James V. Miller

That he has good reason to believe that on or in the (premises) (XXXXXXX) (XXXXXXX) located at 4006 Duplessis St. Bottom Right Apartment, as entering from front of Building from Courtyard within the Parish of Orleans, State of Louisiana as more fully described in the application for this warrant, there is now being concealed certain property, namely, .22 Caliber Revolver, blue or black in color.

WHICH said property constitutes evidence of the commission of a crime or offense against the Laws of the

State of Louisiana set forth in the Louisiana Revised Statutes, and as I am satisfied from the affidavit(s) submitted in support of the application for this warrant that there is probable cause to believe that the aforesaid property is being concealed on the (premises) (XXXXX) (XXXXXX) above described, and that the aforesaid grounds for the issuance of this search warrant exist;

YOU ARE HEREBY ORDERED to search forthwith the aforesaid (premises) (XXXXXX) (XXXXX) for the property specified, serving this search warrant and making the search, and if the property be found there, to seize it, leaving a copy of this warrant and a receipt for the property seized, to make your written return on this warrant including a written inventory of the property seized and to bring the said seized property before me within ten (10) days of this date as required by law.

YOU ARE (XXXXXX) AUTHORIZED to execute this warrant and to make this search during the daytime or the nighttime and if the property herein described be found on the (premises) (XXXXXXXX)(XXXXXXX) herein described to seize said property in accordance with law.

YOU ARE (XXXXX) AUTHORIZED to execute this warrant and to make this search on a Sunday and if the property herein described be found on the (premises) (XXXXXXXX)(XXXXXXXXXX) herein described to seize said property in accordance with law.

NEW ORLEANS, LOUISIANA, THIS 30 DAY OF MARCH 1968.

/s/ illegible
Judge, Section F
CRIMINAL DISTRICT COURT

COPIES:

1-Person Upon Whom Warrant is served
1-Judge Signing Warrant
I-District Attorney
1-Record Room
1-2nd Copy (When Making Return) to Judge
Who Signed the Warrant

Clerk's Office 5-25 20 00
FORM 117 A A true Copy

Revised December 1966 illegible Deputy Clerk,
Criminal District Court

Parish of Orleans

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

APPLICATION FOR SEARCH WARRANT

BEFORE ME, the undersigned Judge of the Criminal District Court, Parish of Orleans, State of Louisiana, personally came and appeared: Detective James V. Miller
living and residing at: 2121 Indiana Ave. Kenner, La.

WHO, after being duly sworn by me, deposed and said that a search warrant should issue authorizing the search, during the daytime or the nighttime and on Sunday, of the following described (premises)(XXXXX)(XXXXX)
4006 Duplesses St. bottom right apartment as entering from the front of the building from the Courtyard
more particularly the xxxxx multiple family dwelling
municipal number 4006 Duplesses St. bottom right apartment as entering from the front of the building from the Courtyard

Type of Occupancy (residence)(XXXXX)

Structure brown brick
Number of Stories two stories
Apartment Number

FOR the purpose of seizing the following described property .22 caliber revolver, blue in color.

A-123

Clerk's Office 5-25 20 00
A true Copy

Revised December 1966 illegible Deputy Clerk,
Criminal District Court

Parish of Orleans

Page One(l) Continued on page two(2)

THE reasons and facts for the request of this search warrant are:

That on December 30, 1967, a Yellow cab number 662, bearing 1967 La. License, was found abandoned in the 9000 block of Old Gentilly Road, at about 9:00 P.M. by Patrolman N. Nunez of the Seventh District, and upon close examination of this cab, found with the lights on, motor running, the officer found what appeared to be blood stains on and about the floor of the cab. No operator could be found in the area. Fearing foul play, the detective bureau was notified, a search was made of the immediate area, and proved negative. The cab was then taken to the Motor maintace and kept in a locked cage, for furthur Processing. Other investigation was conducted, attempting to locate the driver of said

cab, but to no avall. It was learned from the Toye Bros. Yellow Cab Co. it was learned that the driver of this vehicle was Mr. Charlen Bernard Reinecke, 101 WM about 44 Yrs. of 2450 Gladiolas St, N.O.,La.

/s/ Detective James Miler
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 30 day of March.
1968, AT NEW ORLEANS, LOUISIANA

Clerks Office 5-25 2000
A True Copy
/s/ illegible
JUDGE, OF THE CRIMINAL DISTRICT COURT, SECTION F
illegible Deputy Clerk,
Criminal District Court
Parish of Orleans

The search of the area was called off, until the AM on the morning of December 31, 1967.

At about 9:35 A.M. the body of Mr. Charles B. Reinecke, was found floating in a ditch along side of the roadway in the 8900 block of Old Gentilly Road, which was approximately 16 feet down town of New Orleans Public Service Pole numer 44.

Through investigation, it was determined that the victim Reinecke was shot one time in the right cheek. The body was pronounced dead by Dr. Ignacio Medina, of the Orleans Parish Cornors office.

Through investigation, on March 27, 1968, Sgt. Eugene Fields and Detective James V. Miller, upon examining the case file, noticed THAT on Jan. 29, 1968, one Lloyd West, CM, 19 yrs. was questioned relative to this

murder investigation, and that there was some details that were left unanswered, and the alibi of subject WEST appeared to be false.

On March 27, 1968, Sgt. Fields & Det. Miller obtained typed written, signed statements, from Mrs Dorothy Thornton, CF 30 yrs of 3712 Bruxelles St. Mrs. Dudley Thornton, Jr. CM 30 yrs of 3712 Bruxelles St. and Thomas Crayton, CM 30 Yrs of 1425 La Harpe St. who was to be at a party with subject West on the night of Dec. 30, 1967. The statements given by each, telling that the only persons at the party at 1478 Lafreniere St., were themselves and that West was not see that day.

On Friday, March 29, 1968, Sgt. Fields and Det. Miller, requested assistance of Patans D. Delatte and P. Berner of the third District to go to the address of 1458 Senate St. apt E, and bring subject Lloyd West to the Detective Bureau for an interview by Fields & Miller, if this subject would permit same.

At about 7:30 P.M. Lloyd West agreed to accompany the officers to the Detective Bureau.

Sgt. Fields and Det. Miller interviewed Lloyd West, after informing him of his rights with New Orleans Police Department rights of an arrestee or investigation, form number 20893, that he was being investigated as a suspect in the murder of Charles B. Reinecke, cab driver for Yellow Cab Co.

Lloyd West signed form 20893, wavering his rights, and agreed to give the officer a signed typed written statement, and agreed to take a polygraph, which he agreed. The Officers then sent for Lloyd West mother, Mrs. Wilamina West of 1458 Senate St. Apt. E, and upon her arrival at the Detective Bureau, she was given the full details, that her

son, was being investigated as a suspect in this murder. Mrs. West agreed to assist the Officers by talking to her son, and she stated to the officers that he was not at her house when he mentioned he was, and she suggested that it would be good if he did take the Polygraph test.

At about 10:00 P.M. 3/29/68, Sgt. E. O'Donnel was contacted and upon his arrival at police headquarters, at about 10:20 P.M. Lloyd West was taken to the Polygraph Room, where he signed a standard form agreeing to take this examination.

At about 11:30 P.M. Sgt. O'Donnel called Sgt. Fields and Miller to the Polygraph, turning West over to them for interrigation and through this interrogration, Lloyd West, gave the Officers full details how he along with one Roland Gibson, robbed and shot the victim Charles B. Reinecke.

Lloyd West, in presence of his mother, agreed to give the complete details on video tape, which was handled by Patn. Malcolm Goode, of the Bureau of Identification.

Lloyd West gave the Officers the address of 4006 Duplessis St., bottom right apartment, as entering from the front of the building from the courtyard. Lloyd West, explained that the weapon used to shot the victim Reinecke, was a .22 revolver, blue or black in color, and that subject Roland Gibson still has this weapon, and had fired this weapon into a unknown colored females house in the project, address not known by him but agreed to show the officers if necessary at a later date, and that Lloyd West is still in possession of this weapon, and that he staye with his mother at 4006 Duplessis St, as explained and that this subject hides the gun under his matress, and has had on the past shot at the Armed Forces police, while being AWOL, and explained to the officers that he is dangerous.

For the above mention reasons, the request for a search warrant be issued for the search of this .22 caliber weapon used in the murder of Charles B. Reinecke, which may be concealed in the described address.

/s/ Detective James Miller
AFFIANT

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1968, AT NEW ORLEANS, LOUISIANA

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JUDGE, OF THE CRIMINAL DISTRICT
COURT, SECTION F
illegible Deputy Clerk,
Criminal District Court

Parish of Orleans

APPENDIX I

CRIMINAL DISTRICT COURT FOR
THE PARISH OF ORLEANS

STATE OF LOUISIANA

Case No. _____ Item No. L-21825-67

SEARCH WARRANT

ORDER OF SEARCH

TO: THE SUPERINTENDENT OF THE NEW ORLEANS DEPARTMENT OF POLICE and/or HIS DESIGNATED REPRESENTATIVE(S).

AFFIDAVIT(S) HAVING BEEN MADE BEFORE ME BY Detective James V. Miller

That he has good reason to believe that on or in the (premises) (XXXXXXX) (XXXXXXX) located at 4006 Duplessis St. Apt. "E" within the Parish of Orleans, State of Louisiana as more fully described in the application for this warrant, there is now being concealed certain property, namely, .22 Caliber Revolver, blue or black in color, with black tape around the handle, which is dismantled.

WHICH said property constitutes evidence of the commission of a crime or offense against the Laws of the

State of Louisiana set forth in the Louisiana Revised Statutes, and as I am satisfied from the affidavit(s) submitted in support of the application for this warrant that there is probable cause to believe that the aforesaid property is being concealed on the (premises) (XXXXX) (XXXXXX) above described, and that the aforesaid grounds for the issuance of this search warrant exist;

YOU ARE HEREBY ORDERED to search forthwith the aforesaid (premises) (XXXXXX) (XXXXX) for the property specified, serving this search warrant and making the search, and if the property be found there, to seize it, leaving a copy of this warrant and a receipt for the property seized, to make your written return on this warrant including a written inventory of the property seized and to bring the said seized property before me within ten (10) days of this date as required by law.

YOU ARE (XXXXXX) AUTHORIZED to execute this warrant and to make this search during the daytime or the nighttime and if the property herein described be found on the (premises) (XXXXXXXX)(XXXXXXX) herein described to seize said property in accordance with law.

YOU ARE (XXXXX) AUTHORIZED to execute this warrant and to make this search on a Sunday and if the property herein described be found on the (premises) (XXXXXXXX)(XXXXXXXXXX) herein described to seize said property in accordance with law.

NEW ORLEANS, LOUISIANA, THIS 30 DAY OF MARCH 1968.

/s/ illegible
Judge, Section F
CRIMINAL DISTRICT COURT

COPIES:

1-Person Upon Whom Warrant is served
1-Judge Signing Warrant
1-District Attorney
1-Record Room
1-2nd Copy (When Making Return) to Judge
Who Signed the Warrant

Clerk's Office 5-25 20 00
FORM 117 A A true Copy

Revised December 1966 illegible Deputy Clerk,
Criminal District Court

Parish of Orleans

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

APPLICATION FOR SEARCH WARRANT

BEFORE ME, the undersigned Judge of the Criminal District Court, Parish of Orleans, State of Louisiana, personally came and appeared: Detective James V. Miller
living and residing at: 2121 Indiana Ave. Kenner, La.

WHO, after being duly sworn by me, deposed and said that a search warrant should issue authorizing the search, during the daytime or the nighttime and on Sunday, of the following described (premises)(XXXXX)(XXXXX)
1458 Senate St. Apt E.
more particularly described as: multiple family dwelling
municipal number 1458 Senate Street, Apt. E

Type of Occupancy (residence)(XXXXX)

Structure brown brick
Number of Stories two stories
Apartment Number "E"
FOR the purpose of seizing the following described property .22 caliber revolver, blue or black in color with black tape around the handle, which is presently dismantled

Clerk's Office 5-25 20 00
A true Copy

Revised December 1966 illegible Deputy Clerk,
Criminal District Court

Parish of Orleans

Revised December 11966

Page two(2) Continued on page three(3)

THE reasons and facts for the request of this search warrant are:

That on December 30, 1967, a Yellow cab number 662, bearing 1967 La. License, was found abandoned in the 9000 block of Old Gentilly Road, at about 9:00 P.M. by Patrolman N. Nunez of the Seventh District, and upon close examination of this cab, found with the lights on, motor running, the officer found what appeared to be blood stains on and about the floor of the cab. No operator could be found in the area. Fearing foul play, the detective bureau was notified, a search was made of the immediate area, and proved negative. The cab was then taken to the Motor maintace and kept in a locked cage, for furthur Processing. Other investigation was conducted, attempting to locate the driver of said cab, but to no avall. It was learned from the Toye Bros. Yellow Cab Co. It was learned that the driver of this vehicle was Mr. Charlen Bernard Reinecke, 101 WM about 44 Yrs. of 2450 Gladiolas St, N.O.,La.

/s/ Detective James Miler
AFFIANT

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COURT, SECTION F

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On March 30, 1968 at about 6:20 AM Roland Gibson was arrested from his residence at 4006 Duplessis St. Upon being interrogated denied any knowledge of the whereabouts of the weapon used in this crime.

On March 30, 1968 at about 10:00PM, upon arrival of Sgt. Fields and Det. Miller, processed to the Central Lockup and 10:05PM removed Lloyd West, taking him to the Detective Bureau, for further interrogation, again informing him of his constitutional rights with Police Department Rights of Arrestee form #20926. Through this interrogation West gave the officers information that the weapon used, that being a .22 cal. revolver, blue or black in color, with black tape around the handle, was concealed in the matress of his bed at his mother's house at 1458 Senate St. Apt. E. West stated the reason he did not tell the officers this in the beginning is because he felt that having this revolver in his possession that they would think that he did the shooting of the victim in stead of Roland Gibson. West agreed to give the officers this information on video tape, which was handled by Officer John Reilly of the Bureau of Identification.

For the above mention reasons, it is requested that a search search warrant be issued for the search of the 1458 Senate St., Apt, "E"

/s/ Detective James Miler
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS 30 day of March.
1968, AT NEW ORLEANS, LOUISIANA

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illegible _____Deputy Clerk,
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